

VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM MANUAL



**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION**

MAY 20, 2005



If you have general questions or need additional copies of this document, please contact KDHE's office. The Application Form and other associated documents may be obtained by contacting KDHE's office or may be downloaded from the internet at the KDHE/Bureau of Environmental Remediation/Remedial Section home page (<http://www.kdhe.state.ks.us/ber/remedial>).

Kansas Department of Health and Environment
Bureau of Environmental Remediation
Remedial Section/Voluntary Cleanup and Property Redevelopment Program
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INTRODUCTION TO THE VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM





USEFUL LINKS:

Voluntary Cleanup and Property Redevelopment Program

http://www.kdhe.state.ks.us/remedial/vcprp_unit.htm

Risk-based Standards for Kansas Manual

http://www.kdhe.state.ks.us/remedial/rsk_manual_page.htm

KDHE's Brownfields Program

<http://www.kdhe.state.ks.us/brownfields/index.html>

KDHE's Environmental Use Control Program

<http://www.kdhe.state.ks.us/remedial/eucs.htm>

Kansas Agricultural Remediation Board

<http://www.karb.org>

US Environmental Protection Agency, Region VII

<http://www.epa.gov/region7/>

KDHE Laboratory Accreditation (Certified Labs)

<http://www.kdhe.state.ks.us/envlab/index.html>

SW-846 On Line (Analytical Methods Reference)

<http://www.epa.gov/epaoswer/hazwaste/test/main.htm>

Kansas Board of Technical Professions (Licensing of Professional Engineers and Geologists)

<http://www.accesskansas.org/ksbtp/>

Hazardous Waste Cleanup Information

<http://www.clu-in.org/>

Ground Water Remediation Technologies Analysis Center

<http://www.gwrtac.org/>

Interstate Technology Regulatory Council (ITRC)

<http://www.itrcweb.org/common/default.asp>



TABLE OF CONTENTS

Section 1. Introduction to the Voluntary Cleanup and Property Redevelopment Program	3-25
1.0 Introduction	5
1.1 Applicant	6
1.2 Eligibility	6
1.3 Application Process	8
1.4 Classification of Contamination	8
1.5 Coordination with Other Programs	9
1.6 Voluntary Agreement	10
1.7 Deposits	11
1.8 Environmental Assessments	12
1.9 Determining the Need For Further Action	14
1.10 Voluntary Investigation	14
1.11 Voluntary Cleanup Proposal	16
1.12 Voluntary Cleanup Plan	17
1.13 Public Participation	18
1.14 Voluntary Cleanup	19
1.15 Verification Sampling	20
1.16 No Further Action Determination	21
1.17 Close Out of Voluntary Cleanup Actions	23
1.18 Summary of VCPRP Activities	23
Section 2. VCPRP Flow Chart	27
Section 3. Program Contacts	29
Section 4. Frequently Asked Questions	31
Section 5. VCPRP Application and Instructions	39
Section 6. VCPRP Statutes	47
Section 7. VCPRP Regulations	55
Section 8. Sample of Voluntary Agreement	65
Section 9. VCPRP Scopes of Work for Investigation	71
Section 10. Quality Assurance and Quality Control	89
Section 11. Choosing a Consultant	93
Section 12. Choosing a Laboratory	99
Section 13. VCPRP Scopes of Work for Cleanup	101
Section 14. Risk-based Standards for Kansas (RSK)/Determining Cleanup Objectives	125
Section 15. Notice of Public Participation	129
Section 16. Verification Procedures	131
Section 17. Sample of No Further Action Determination Letters	133
Section 18. KDHE's Brownfields Program	139
Section 19. KDHE's Environmental Use Control Program	145
Section 20. Kansas Agricultural Remediation Board and Reimbursement Program	165
Section 21. Memorandum of Agreement/KDHE and USEPA Region VII	169

INTRODUCTION TO THE VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM





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SECTION 1

INTRODUCTION TO THE VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM





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SECTION 1

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

1.0 Introduction

The Voluntary Cleanup and Property Redevelopment Act was enacted by the Kansas Legislature, endorsed by the Governor, and became law on July 1, 1997 (Kansas Statutes Annotated 65-34,161 through 65-34,174). The law resulted from a 1997 initiative of Governor Bill Graves to statutorily address the issues associated with buying, selling or developing environmentally contaminated properties. Rules and regulations to implement the law were adopted on June 26, 1998 (Kansas Administrative Regulations 28-71-1 through 28-71-12). The Voluntary Cleanup and Property Redevelopment Program (VCPRP) was created to implement the new law, and is administered by the Kansas Department of Health and Environment (KDHE) Bureau of Environmental Remediation (BER).



Actual or potential environmental contamination may make otherwise appealing properties unattractive to prospective buyers and lenders.

The VCPRP provides a mechanism for property owners, facility operators, prospective purchasers, and local governments to voluntarily address contaminated properties with technical and regulatory guidance from KDHE. As part of the program, stakeholders performing cleanup of contaminated properties that meet criteria set out in the law can receive a No Further Action determination from KDHE that can provide protection from potential environmental liabilities for known contamination. Adjacent property owners who did not contribute to the contamination may also receive protection concerning known contamination from KDHE through such determinations. These determinations provide assurance that the remediated properties will not become the subject of future KDHE enforcement action. In addition, KDHE entered into a Memorandum of Agreement (MOA) with the Environmental Protection Agency (EPA) to provide voluntary parties with assurance of relief from future federal liability at their property as long as approved voluntary action is completed. The MOA was executed on March 2, 2001. A copy of the MOA is included within this manual for reference.

Participation in the VCPRP is voluntary. Thus, the program allows a voluntary party to terminate their participation at any point by written notification to KDHE provided that the property is left in no worse condition from a human health and environmental perspective than when the property was accepted into the VCPRP.



SECTION 1

Voluntary parties that are accepted into the VCPRP follow a streamlined process to address contamination at their property in an expeditious manner to encourage the redevelopment or enhancement of the property. Clearly defined cleanup standards are provided to the voluntary party early in the program so the time and costs involved in cleanup, or the necessity for cleanup, can be determined in advance.

The VCPRP is designed so industries and businesses may properly address contaminated properties through a private and state partnership. The voluntary nature of the program benefits owners, real estate purchasers, developers and lending institutions; at the same time, the program benefits the environment and public interest through the identification and cleanup of contaminated properties.

1.1 Applicant

Any person or entity that has title, control or access to a property with threatened, suspected or known environmental contamination is potentially eligible to participate in the VCPRP.

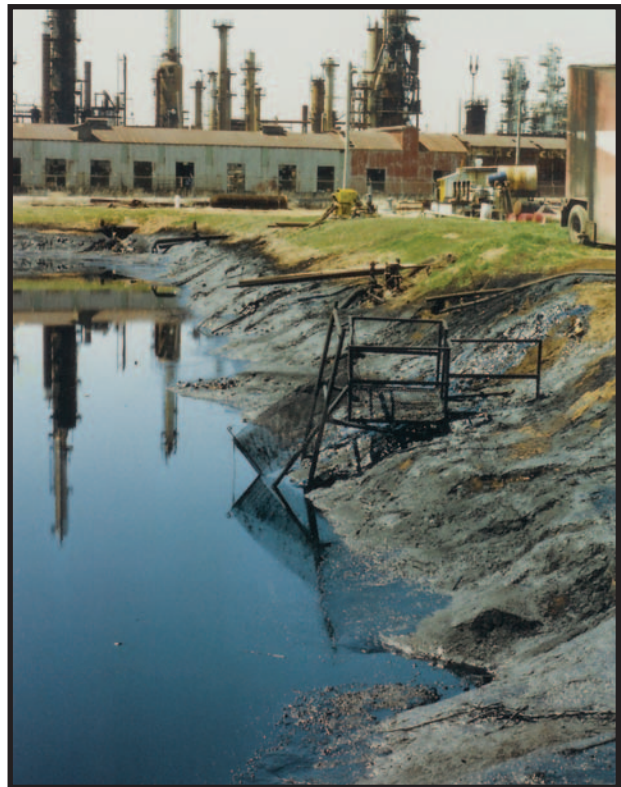
1.2 Eligibility

The determination of an eligible property will be based on all documentation that is submitted with the VCPRP application, and any available technical and scientific information in KDHE's files specific to the property. Properties that are not eligible to participate in the VCPRP include the following:

- 1) Properties that are listed or proposed for listing on the federal National Priorities List established under the Comprehensive Environmental



Urban industrialized areas, commonly referred to as Brownfields, have been targeted by both State and Federal redevelopment initiatives.



Even grossly contaminated properties may be eligible for participation in the VCPRP if they do not represent an immediate threat to human health or the environment.

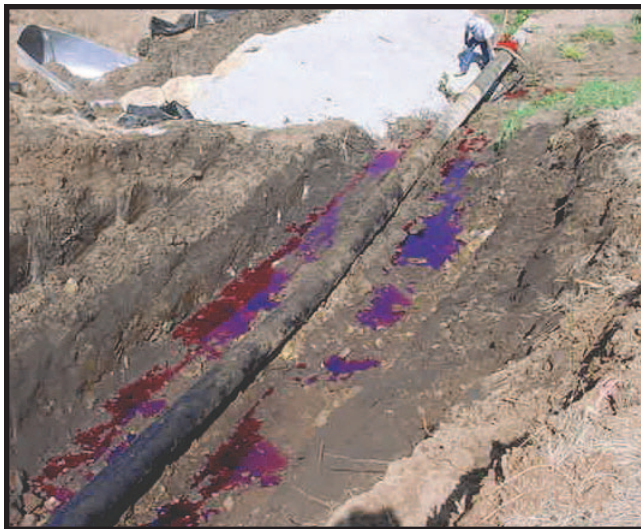


SECTION 1

Response, Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA);

- 2) Properties that are currently under an existing environmental enforcement action, order or agreement with city, county, state or federal governmental agencies;
- 3) Properties which have or should have a permit pursuant to the Resource, Conservation and Recovery Act of 1976 (RCRA), which contains a corrective action component;
- 4) Properties that have been contaminated by oil and gas activities which are regulated by the Kansas Corporation Commission; and,
- 5) Properties that present immediate and significant risk to human health and the environment, including public and private drinking water supplies.

When a property has been determined to be eligible for the VCPRP, the applicant will be referred to as the “voluntary party”.



Emergency actions in response to catastrophic releases have typically been completed prior to making application to the VCPRP.



Even residential properties are not immune to threat of impact from contamination.



SECTION 1

1.3 Application Process

The first step in the application process is to complete and submit an application package which consists of the application form, a non-refundable \$200 application fee, and all supporting documentation. The application form is titled, "Application to Participate," and is located in Section 5 of this document. Completed application forms should be submitted to:

VCPRP Coordinator
Kansas Department of Health and Environment
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367

The completed application form and environmental information will be used by KDHE for screening purposes only to determine an applying property's eligibility for participation in the VCPRP. KDHE has 60 days from receipt of a completed application to make an eligibility determination. The applicant will be notified by KDHE in writing of the determination.

Incomplete applications may be returned to the applicant for revisions or corrections. It is important to complete the application package accurately the first time or upon the first revision. A second revision will not be reviewed without an additional non-refundable application fee of \$200.

1.4 Classification of Contamination

Once a property is determined by KDHE to be eligible to participate in the VCPRP, an initial classification of the level of contamination at the eligible property will be made by KDHE. Based on the information contained in the application, the property will be placed into one of four categories as defined in the regulations (K.A.R. 28-71-5). These categories include:

- 1) Class I - for an eligible property with suspected or confirmed contamination, where the subject property is not a source of contamination;



Decades of neglect may be addressed through the VCPRP to restore property to productive use.



SECTION 1

- 2) Class II - for an eligible property with suspected or confirmed soil contamination, no known or suspected soil contamination emanating off the property and no ground water contamination;
- 3) Class III - for an eligible property with suspected or confirmed soil and/or ground water contamination but no off-property contamination; and,
- 4) Class IV - for an eligible property with suspected or confirmed soil and/or ground water contamination both on and off the property.

This classification system is designed to provide flexibility to the overall voluntary process. Properties with minimal on-property contamination are not required to meet the same requirements as properties with on- and off- property contamination. KDHE has developed a specific investigation Scope of Work for each of the classes that will facilitate a property-specific, expedited, and cost-effective response under the VCPRP. These Scopes of Work are presented in Section 9 of this document.

The property's eligibility and KDHE's classification of contamination will be conveyed to the applicant through written notification. All additional information obtained during the VCPRP process may be used by KDHE to re-evaluate the property's eligibility or classification of contamination.

1.5 Coordination With Other Programs

On receipt of a VCPRP application, KDHE will initiate communication with other programs within KDHE to ascertain property eligibility. Candidate properties will be reviewed to determine status relative to CERCLA, RCRA and other environmental enforcement programs. Candidate properties may be eligible for reimbursement from the Petroleum Storage Tank

Release Trust Fund, the Above-Ground Storage Tank Trust Fund, and the Dry Cleaner Trust Fund; however, these properties must meet the requirements of the respective laws and guidance even though they may also be eligible for the VCPRP. Properties eligible for the VCPRP that elect not to participate in an available trust fund will not be eligible for reimbursement from that trust fund for actions taken under the VCPRP.



Poor housekeeping practices may have left a property with a legacy of potential environmental liability.



SECTION 1

The VCPRP coordinates with other programs including the Brownfields Program for potentially contaminated properties owned or to be purchased by local units of government, not-for-profit organizations, or other quasi-governmental agencies across the state; KDHE's Environmental Use Control (EUC) Program for application of EUCs to VCPRP properties; and the Kansas Agricultural Remediation Board (KARB) for contaminated agricultural related properties. Additional information concerning the Brownfields Program, the EUC Program, and KARB can be found in Sections 18, 19, and 20, respectively.

1.6 Voluntary Agreement

Once a property has been determined eligible for the VCPRP, the voluntary party will be required to enter into a non-negotiable Voluntary Agreement with KDHE prior to commencing any work under the VCPRP at the property. The Voluntary Agreement describes all the terms and conditions for implementation of VCPRP activities. The Voluntary Agreement is non-binding, meaning that the voluntary party can terminate the agreement at any time, as



The extent and magnitude of contamination will be assessed through the VCPRP, including migration of contamination to surrounding properties.



SECTION 1

long as the environmental conditions on the property are not worse than when the application was initially submitted to KDHE. KDHE will not review activities pertaining to the property until the Voluntary Agreement has been executed and an initial deposit has been received by KDHE.

1.7 Deposits

The VCPRP was established as a “pay to use” program, meaning voluntary parties who have elected to participate in the program are required to pay for KDHE oversight of VCPRP activities for the eligible property. KDHE’s review and oversight assures work conducted in the VCPRP is consistent with the requirements of the rules and regulations for the program. Oversight and review by KDHE can include the following activities: 1) review of documents, studies, and test results; 2) necessary administrative decision making; 3) collection of confirmatory, duplicate soil and/or water samples; 4) visits to the property; 5) verification activities; and, 6) associated indirect costs. Indirect cost rates are based on departmental policy and are currently established at a rate of 22% for VCPRP oversight. Indirect rates may be adjusted periodically and are therefore subject to minor changes.



The VCPRP endorses the use of expedited site characterization methodologies.

The VCPRP law requires an initial cash deposit be paid to KDHE prior to commencing oversight of work at a property. The VCPRP regulations define the requirements for an initial deposit by the voluntary party on the basis of the property’s contamination classification as discussed in Section 1.4. Initial deposits for Class I properties will not exceed \$1,000. Initial deposits for Class II, Class III and Class IV properties will be \$3,000, \$4,000, and \$5,000, respectively. The VCPRP has developed policy to provide some flexibility in the amount of initial deposits for a group of properties applying to the program at the same time. The group of properties must meet certain criteria defined within the policy to qualify. Questions concerning provisions for grouped properties should be directed to the VCPRP Coordinator.

If KDHE oversight costs should exceed the amount of the initial deposit, the voluntary party will be notified and a supplemental payment will be required from the voluntary party before additional VCPRP activity may be conducted at the property. The amount of this additional fee will be agreed upon by the voluntary party and KDHE. Subsequent deposits may be provided



SECTION 1

by the voluntary party through quarterly billing by KDHE as costs accrue. Timely remittance of the reimbursements is required by law for a voluntary party's continued participation in the VCPRP.

Upon the completion of VCPRP activities, KDHE is required to refund the unused balance of initial and subsequent deposits to the voluntary party within 60 days of the mutual termination of the Voluntary Agreement.

1.8 Environmental Assessments

The primary reason for performing an environmental assessment of a property is to determine if the property has been contaminated with chemicals, waste material, etc., as a result of past operations or practices at the property and whether any environmental liabilities are associated

with the property. A majority of these environmental assessments result from environmental "due diligence" in property transactions. Buyers and lenders often require a seller to perform an environmental assessment prior to the actual transaction to determine potential future environmental liabilities associated with the property.



Historical material use and handling practices that were considered safe and appropriate at the time, such as certain chemicals formerly used to fumigate stored grain, may have caused environmental contamination that now poses a potential risk to human health and the environment.

Environmental assessments are typically performed in phases with each successive phase further reducing the inherent uncertainties in the evaluation process, i.e., the more property-specific data collected, the better the understanding of environmental conditions and liabilities associated with a property. The first phase (Phase I) of an environmental assessment is performed to identify evidence of prior contamination at the property. The Phase I assessment includes a records search and an initial property inspection. If a significant

likelihood of impact to the property from chemicals or hazardous wastes exists, the process advances to Phase II, or an intrusive study. In this phase, soil and water samples are collected from the property and analyzed to determine the presence or absence of contamination.

The VCPRP acknowledges environmental assessments that are prepared by a qualified environmental professional as defined in the VCPRP regulations (K.A.R. 28-71-1). The EPA has proposed Federal Regulations (40 CFR Part 312 - not yet final) establishing standards and practices for "All Appropriate Inquiries (AAI)". These proposed federal regulations, as drafted, include specific definition and provide minimum qualifications for an environmental professional performing environmental assessments relative to AAI. Once final, the AAI



SECTION 1

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

federal regulations may affect required qualifications for environmental professionals conducting environmental assessments in Kansas. Environmental assessments submitted to KDHE as part of a VCPRP activity must include the following information:



The use of trained and qualified environmental professionals can save time, money and headaches.

- 1) The legal description of the property and a map identifying the location, boundaries, and size of the property;
- 2) A description of the physical characteristics of the property and areas contiguous to the property, including the locations of any surface water bodies and ground water aquifers;
- 3) The locations of any water wells on the property or in an area within a half-mile radius of the property, and a description of the use of those wells;
- 4) An operational history of the property as reconstructed through the best efforts of the voluntary party, and the current land use in the vicinity of the property;
- 5) Present and proposed uses of the property;
- 6) Information concerning the nature and extent of any contamination;
- 7) Information on releases of contaminants that have occurred at the property including any impacts on areas in the vicinity of the property;
- 8) Any sampling results or other data that characterize the soil, ground water, or surface water on the property; and,
- 8) A description of the potential for human and environmental exposures to contamination at the property based upon the property's current use and any future use proposed by the property owner as approved by the local zoning authority.



SECTION 1

Environmental assessments are useful in providing preliminary information to KDHE concerning the environmental status of a property and must be submitted with the completed application package.

1.9 Determining The Need For Further Action

KDHE will review the application package and environmental assessment reports (if submitted) to determine the need for further action at the eligible property. KDHE's determination will be based on documented information provided by the voluntary party, information in KDHE's files pertaining to contamination in the vicinity of the eligible property, reconnaissance of the eligible property and other documentation sources. KDHE will use this information to make one of the following four determinations: 1) an additional investigation is required (Voluntary Cleanup Investigation); 2) cleanup is required (Voluntary Cleanup Proposal/Plan); 3) no further required action (No Further Action determination); or 4) referral of the property to a different state or federal program.



A vital element of any cleanup is the characterization and removal of any source materials that may remain on the property.

1.10 Voluntary Investigation

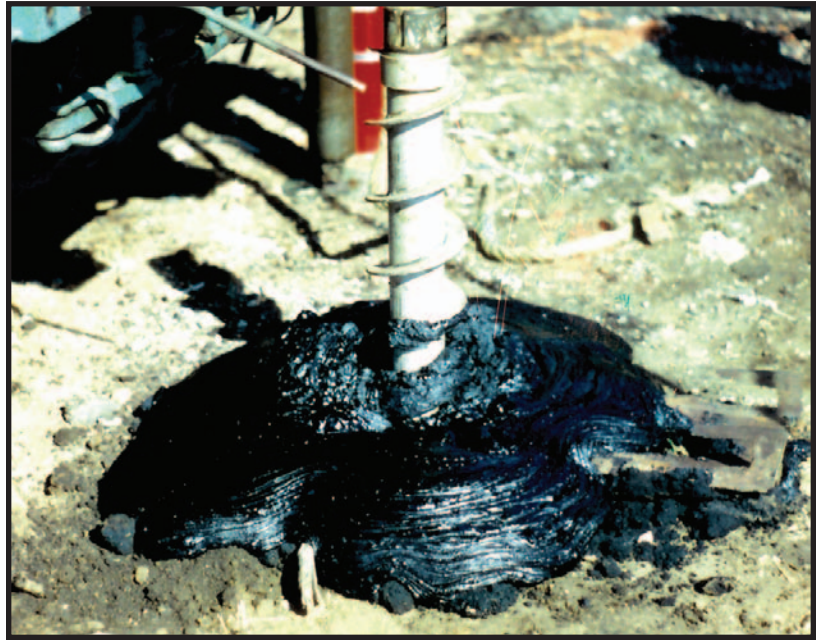
KDHE will review environmental information submitted with the application regarding the subject property. Based on this information, if it is determined that the contamination at a property has not been adequately characterized, a Voluntary Cleanup Investigation (VCI) will be required. The purpose of the VCI is to validate existing environmental information at a property and to provide additional data necessary to enable KDHE to properly evaluate the contamination and the potential risks to human health and the environment posed by the contamination. The VCI must be performed by a qualified environmental professional and environmental samples must be analyzed by a laboratory certified by KDHE. Prior to beginning the VCI, the selected environmental professional must submit a VCI work plan to KDHE in the format outlined in this guidance document. KDHE will review and approve the work plan before the investigation begins. KDHE approval of a submitted work plan will be based on the work plan meeting KDHE's information requirements for evaluating risk to human health and the



SECTION 1

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

environment and for developing a proposal for remediation, if required. Existing environmental assessments and the VCI must fulfill the following objectives to be approved by KDHE:



The significance of environmental impacts may not be readily apparent prior to implementing a thorough investigation.

- 1) Sources for contaminants have been adequately identified and investigated;
- 2) The vertical and horizontal extent of contaminants has been determined;
- 3) Human health and environmental receptors have been identified;
- 4) Potential risks and impacts to receptors have been evaluated; and,
- 5) Quality assurance and quality control have been maintained.



Voluntary investigations may include sampling of potential sources such as inconspicuous sewers, traps and sumps to identify where and how contaminants have been released at a property.

Generally, it is not necessary to repeat environmental assessments that were adequately performed previously at a property. Rather, the VCI should supplement existing data necessary for appropriate decision making. In some cases where previous investigations were conducted without KDHE's oversight, KDHE may request some limited verification sampling to verify the accuracy of data submitted. The VCI work plan will include a project schedule, a Quality Assurance Project Plan (QAPP), and a Health and Safety Plan (HASP). Qualified environmental consultants will most likely have standardized QAPPs and HASPs that may be modified to meet the needs of specific properties. Following the KDHE-recommended VCI work plan and report formats contained in this guidance document will expedite the review and approval process.



SECTION 1



Investigating and characterizing ground water contamination may be required at properties participating in the VCPRP.



Installation of permanent monitoring points may be required for long-term ground water cleanup and monitoring projects.

1.11 Voluntary Cleanup Proposal

If KDHE determines remediation is necessary to address the risks posed by the property, the voluntary party will submit a Voluntary Cleanup Proposal to KDHE for approval. The proposal will be based on a Scope of Work (refer to Section 13) that is provided by KDHE and should meet the following objectives:

- 1) Be protective of human health and the environment for documented present and future land uses;
- 2) Meet applicable state standards and guidelines for cleanup or meet property-specific standards established through the performance of the results of a risk analysis approved by KDHE;
- 3) Evaluate at least two remedial alternatives other than “no action” that are proven reliable and are economically and technically feasible; and,
- 4) Provide a description and evaluation of the voluntary party’s preferred remedial alternative.



SECTION 1

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

Effective July 1, 2003, the Kansas legislature enacted legislation effectively establishing the department's authority to develop an environmental use control program. Environmental use controls, commonly referred to as "institutional controls" in previous VCPRP regulations and guidance, can be used as a component of a preferred alternative but only in cases where selected cleanup standards are in excess of KDHE's unrestricted residential use levels. Refer to Section 19 for additional information on the EUC Program.



Thorough evaluation of cleanup alternatives in the Voluntary Cleanup Proposal process may prevent unforeseen consequences in the cleanup phase.

1.12 Voluntary Cleanup Plan

Following the approval of a proposed method for cleanup by KDHE, a Voluntary Cleanup Plan will be submitted by the voluntary party. The Voluntary Cleanup Plan should follow applicable guidance contained in this document to expedite review and approval. The Voluntary Cleanup Plan should include the following:

- 1) A description of all tasks necessary to implement the preferred remedial alternative;
- 2) Preliminary or final design plans and specifications for the preferred remedial alternative;
- 3) A description of easements and permits (federal, state or local) that may be required;
- 4) An implementation schedule;
- 5) A plan to monitor the effectiveness of the cleanup during implementation and operation; and,
- 6) A verification plan to document that cleanup objectives have been achieved at the project's conclusion.



SECTION 1



Cleanup of contamination can often be closely integrated with redevelopment of a property.

Following review and acceptance of the Voluntary Cleanup Plan by KDHE, a public notice of the proposed plan will be published.

1.13 Public Participation

Public participation is required for properties in the VCPRP where a cleanup is deemed necessary. Public participation is required to assure an affected community that the planned cleanup actions will adequately address the risks that a contaminated property may pose to public health and the environment.

The public participation process begins at the point when the Voluntary Cleanup Plan has been accepted by KDHE. KDHE will consult with the voluntary party to develop a notice of KDHE's acceptance of the plan. The notice, which may consist of a legal notice or an



SECTION 1

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM



The VCPRP encourages consideration of innovative cleanup approaches and technologies.

advertisement, is published in a local newspaper of general circulation in the vicinity of the contaminated property. Public notices will extend at least 15 days from the official posting date and will provide the public an opportunity to review and, if desired, submit written comments regarding the Voluntary Cleanup Plan. During this public notice period, the public may request a public information meeting. In addition to the public notice, a notice of the Voluntary Cleanup Plan may be mailed directly to the appropriate units of local government.

KDHE will respond to all public comments in writing and make a determination as to whether the comments provide rational justification to modify the Voluntary Cleanup Plan. Once the public participation process is complete and no subsequent modifications have been deemed necessary, KDHE will approve the Voluntary Cleanup Plan.

1.14 Voluntary Cleanup

The purpose of a Voluntary Cleanup is to attain a degree of cleanup or protective environmental use controls or both, for contaminants at a property based on current or future land use as determined by local zoning laws. Therefore, property location, surrounding human and environmental receptors and future land use are as important in determining the level of cleanup required as the type and concentration of contaminants present. If a property is to be redeveloped for residential use, a higher level of cleanup could be required than if a contaminated industrial property is to be redeveloped for use by



Ground water cleanup will be required at some VCPRP properties.



SECTION 1

another industry. Under the VCPRP, the voluntary party may select from the following three approaches to determine approvable cleanup levels for their property. More stringent cleanup levels are generally required for future residential use properties than are required for properties slated for non-residential use:

- 1) Cleanup to background levels following KDHE-approved methods to determine what the background level should be;
- 2) Cleanup to contaminant-specific risk-based levels established by KDHE; or,
- 3) Cleanup to levels determined by a property-specific risk-based analysis conducted in accordance with KDHE guidance.

The VCPRP is purposely flexible in the choice of remedial actions to be implemented. Cleanup of contamination through the VCPRP should be cost-effective and provide the necessary level of protection to health and the environment. Innovative technologies, environmental use controls and natural processes will be considered if the level of protection is maintained.

1.15 Verification Sampling

Each Voluntary Cleanup Plan approved by KDHE will have a component devoted to determining if and when the implemented plan has been completed. This will generally involve



environmental sampling of the contaminated media by both the applicant and KDHE. This sampling will confirm that target cleanup levels have been achieved so that KDHE may issue a No Further Action determination. If cleanup targets have not been achieved and a threat to human health or the environment continues to exist at the subject property, additional time may be required for the remediation plan to achieve the cleanup goal or another plan may have to be developed to reach the required level of protection. These situations will be handled on a case-by-case basis.

Verification sampling is typically required to establish that cleanup activities have been effective.



SECTION 1



VCPRP project managers will conduct oversight of verification sampling activities to help validate completion of cleanup.

1.16 No Further Action Determination

A release from further state liability for previous contamination at a property is the primary incentive of the VCPRP. When a voluntary party participates in and follows the program's requirements, the program certifies at the conclusion of the project that cleanup is complete. This certification, through a No Further Action determination, provides the voluntary party with assurance the property will not require further action as long as property conditions at the time of issuing the No Further Action determination do not change. This type of assurance from KDHE is designed to encourage cleanups and stimulate redevelopment of contaminated properties by relieving the voluntary parties' concerns about the extent of future liability and cleanup costs.

The VCPRP offers a No Further Action determination which indicates voluntary actions have been completed in accordance with the program's standards and rules, and KDHE does not require further action at the property.

Generally, there are four unique situations where KDHE may issue a No Further Action determination for eligible properties: 1) insignificant contamination; 2) approved remediation; 3) no contamination detected at the property; and, 4) contamination from an off-property source.



SECTION 1



The No Further Action determination provides assurances which alleviate environmental liability concerns thus encouraging cleanup and stimulating redevelopment of valuable property that may have otherwise been considered undesirable.

- 1) **Insignificant Contamination:** Applies to properties for which KDHE determines that contamination detected during an environmental assessment and/or KDHE-approved VCI presents no significant risk to human health and the environment and contaminant levels are less than applicable federal or state standards.
- 2) **Approved Remediation:** Applies to properties which have been remediated in accordance with a KDHE-approved Voluntary Cleanup Plan and where the success of that plan has been confirmed by verification sampling. Approved remediation can include cleanups reliant on Environmental Use Controls that provide for future monitoring of residual contamination, maintenance of protective structures, and other mechanisms that ensure future protection of human health and the environment.
- 3) **No Contamination:** Applies to properties where no contamination is indicated based on environmental assessments or VCI reports submitted by the voluntary party. The environmental assessment or investigation will document that the past and current uses of the property have not contributed to contamination of soils, surface water or ground water.
- 4) **Off-Property Source of Contamination:** Applies to properties impacted by contamination documented to originate from an off-property source. Under this scenario, a No Further Action determination can only be issued if the source property is being addressed by KDHE or the Environmental Protection Agency



SECTION 1

through an agreement or by regulatory actions. In addition, to qualify for a No Further Action determination under this scenario, KDHE must determine that the contamination on the subject property resulted exclusively from an off-property source and there is no on-property source of contamination.

No Further Action determinations issued by KDHE may contain appropriate disclaimers, limitations, or conditional terms for the specific circumstances at the property. These conditional terms may include environmental use controls that provide for future maintenance and inspections of remedial measures implemented at a property. The issuance of a No Further Action determination applies only to identified conditions on the property and is based upon applicable statutes, rules and regulations that exist at the time of completion of the voluntary activities.

1.17 Close Out of Voluntary Cleanup Actions

Upon receipt of a No Further Action determination letter, the voluntary party will record the No Further Action determination letter with any required attachments on the title of property with the County Register of Deeds office. The voluntary party will then complete and submit an affidavit (provided on a form developed by KDHE) to KDHE attesting that the appropriate documentation has been recorded. The No Further Action determination becomes a permanent record for the successors and assignees of the property and is also retained as a permanent record by KDHE. Once the No Further Action determination letter and attachments have been appropriately filed and the affidavit returned to KDHE, a closure letter officially terminating the voluntary agreement will be issued by KDHE. Leftover funding provided by the voluntary party through initial or subsequent deposits will be refunded to the voluntary party.

1.18 Summary of VCPRP Program Activities Since 1997

In accordance with K.S.A. 65-34,173, KDHE publishes annually in the Kansas Register, the official State of Kansas newspaper published through the office of the Kansas Secretary of State (http://www.kssos.org/pubs/pubs_kansas_register.html), a summary of the number of applicants to the VCPRP, the general categories of applicants, and the number of cleanups completed through the VCPRP. The "Annual Program Report for the VCPRP" for a specific calendar year is developed to provide the information published in the Kansas Register. A copy of the annual report can be obtained by contacting the VCPRP Coordinator.

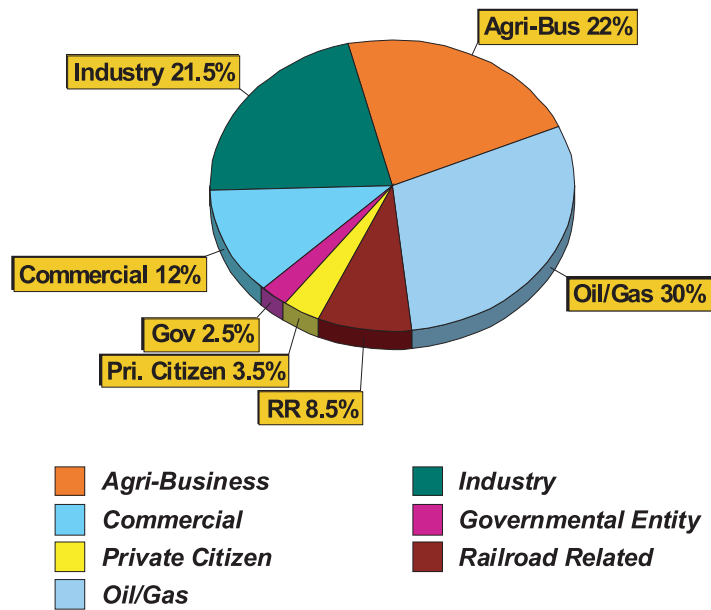
KDHE received the first application to the VCPRP in September, 1997. By the end of calendar year 2004, a total of 357 applications have been received by the VCPRP, with 353 applications approved. Applications to the VCPRP involve a variety of types of properties including oil and gas, agri-business, industrial, commercial, and railroad related properties with some applications received for properties owned or operated by governmental entities and private citizens. Figure 1 provides a general breakdown of the percentages of types of properties that have applied to the VCPRP as of December 2004.



SECTION 1

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

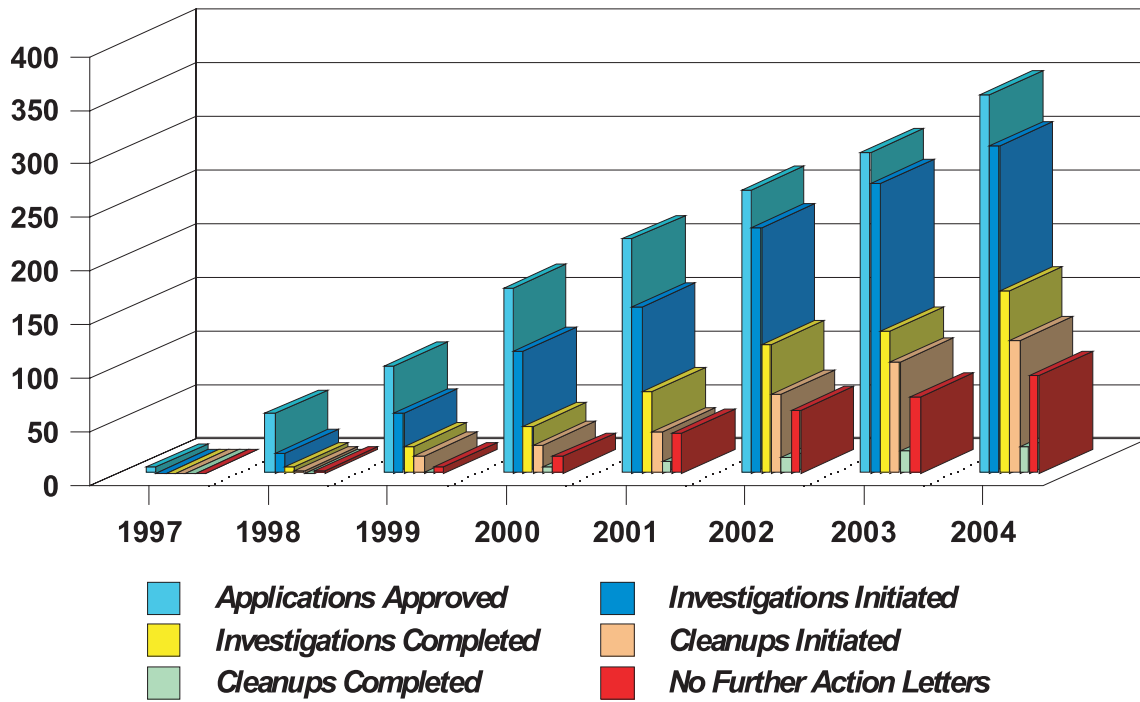
Figure 1
Summary of VCPRP Applicant Categories



The VCPRP has issued 92 No Further Action determinations to Voluntary Parties by the end of 2004. Figure 2 provides a general representation of key VCPRP activity statistics as of December 2004



Figure 2
Cumulative Voluntary Actions





SECTION 1

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

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SECTION 2

VCPRP

FLOW

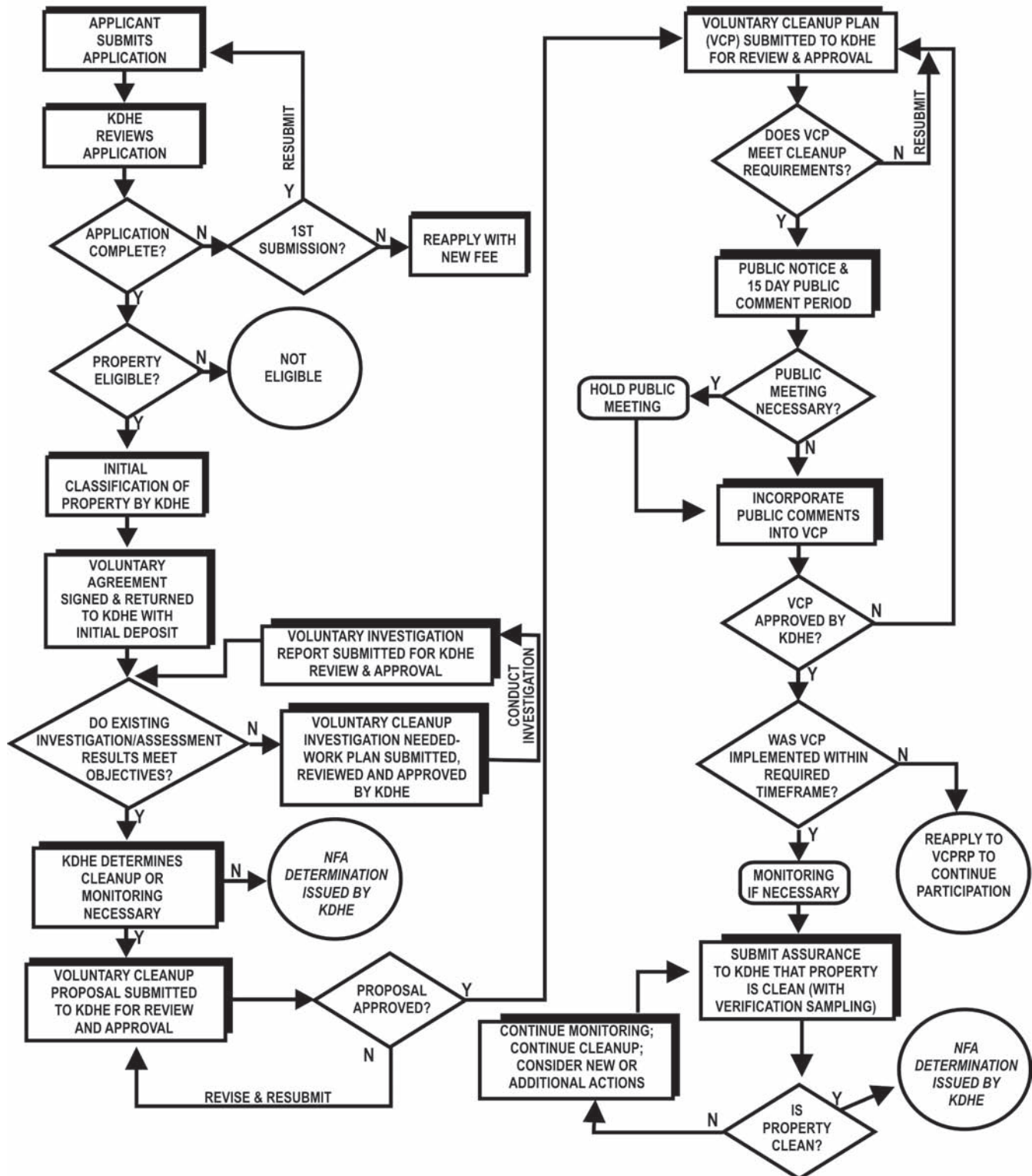
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SECTION 2

THE VOLUNTARY CLEANUP PROCESS



SECTION 3

PROGRAM CONTACTS





KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

Questions and comments concerning the Voluntary Cleanup and Property Redevelopment Program should be directed to the following program staff. Office hours are Monday through Friday from 8:00 A.M. to 5:00 P.M.

Franky D. Arnwine, VCPRP Coordinator

Remedial Section
Bureau of Environmental Remediation
Kansas Department of Health and Environment
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367
(785) 296-1665
E-Mail: farnwine@kdhe.state.ks.us

Rick L. Bean, Chief

Remedial Section
Bureau of Environmental Remediation
Kansas Department of Health and Environment
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367
(785) 296-1675
E-Mail: rbean@kdhe.state.ks.us

Erika Bessey, Attorney

Office of Legal Services
Kansas Department of Health and Environment
1000 SW Jackson, Suite 560
Topeka, Kansas 66612-1368
(785) 296-5334

INTERNET ADDRESS: http://www.kdhe.state.ks.us/remedial/vcprp_unit.htm

SECTION 4

FREQUENTLY ASKED QUESTIONS





FREQUENTLY ASKED QUESTIONS

1. What is the Voluntary Cleanup and Property Redevelopment Program?

The Voluntary Cleanup and Property Redevelopment Program (VCPRP) is a state program established by legislation, passed by the Kansas Legislature and signed by the Governor in 1997. Under the VCPRP, property with environmental contamination that does not pose an immediate or significant threat to human health and the environment may be investigated, cleaned up (if necessary), and returned to productive use. Procedures are greatly simplified and cleanup expedited when compared to federal and state enforcement cleanup programs. A No Further Action determination may be issued to the voluntary party once a property has been properly addressed to limit future environmental liabilities.

2. Who can participate in the Kansas VCPRP?

Just about any person or entity that can adequately demonstrate access to, or control of, a property may propose specific Kansas properties with known or suspected environmental contamination for participation in the VCPRP. This includes previous, current, or prospective property owners; a person who previously, currently, or prospectively operates a facility located at a property; persons who directly or indirectly arranged for the disposal of contaminants at the property; persons who legally control the property; or local governments who acquire title to the property involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances.

3. Why should I consider participating in the VCPRP to evaluate/address environmental contamination at my property?

Known or suspected environmental contamination may render property unproductive, the sale of the property impossible, or financing of activities on the property problematic until the contamination is evaluated and addressed. Current federal and state cleanup programs generally address only properties with significant contamination levels or those that pose an immediate threat to human health or the environment. A much larger number of properties with minor contamination will probably never be evaluated or addressed under federal programs. The VCPRP program provides a relatively streamlined and unambiguous mechanism to return property with contamination to productive use.

4. What types of properties are eligible to participate in the VCPRP?

Any Kansas property containing an actual, threatened or suspected release of environmental contamination, including those properties where the source of the contamination is at an adjacent property, may be eligible to participate in the VCPRP, except: 1) properties listed or proposed for listing on the National Priorities List (NPL) under the Comprehensive



Environmental Response, Compensation and Liability Act (CERCLA i.e. Superfund); 2) properties subject to enforcement actions pursuant to city, county, state or federal environmental laws, orders, or agreements; 3) those properties with a facility which has or should have a permit with a corrective action component pursuant to the Resource Conservation and Recovery Act (RCRA); 4) properties with contamination from releases associated with oil and gas production activities and the releases are specifically regulated by the Kansas Corporation Commission (KCC); 5) properties where the environmental contamination represents an immediate threat to human health or the environment; and, 6) properties that KDHE believes may pose a substantial threat to public or private drinking water wells. Portions of larger properties where other portions have been proposed for NPL listing, are under environmental regulation, are subject to RCRA corrective action or are regulated by KCC may also be eligible.

5. I am contemplating the sale of property. Can I provide a buyer and their lending institution an evaluation of existing environmental conditions at my property through participation in the VCPRP?

Generally, you may be required to conduct a Phase I environmental assessment and, if necessary, a Phase II environmental investigation prior to a sale or refinancing of any industrial or commercial property. If you know or suspect that the property has environmental contamination, you may enter it into the VCPRP to address the contamination and provide the documents generated to your prospective buyer and their financial institution. Unlike Phase I and Phase II environmental investigations, the investigations carried out under the VCPRP will result in an official determination as to whether cleanup will be required and, if so, what will need to be done to receive an official No Further Action determination. Therefore, the seller, prospective buyers, and their lenders will know what will be required to mitigate environmental liabilities at a property which should expedite the transaction of the property.

6. How much time will be involved in the VCPRP process from submitting an application until KDHE issues a No Further Action determination letter?

For properties where the source of the environmental contamination is from adjacent property and that contamination is being addressed under KDHE programs, resolution would likely be within 90 days. For properties where a Voluntary Cleanup Investigation (VCI) is required, several months may be needed depending on size and complexity. For properties where voluntary cleanups are necessary, the time frame will vary considerably depending on complexity, the preferred method of cleanup, and other factors. For example, a property with soil contamination only that can be cleaned up through excavation and disposal can be processed to the No Further Action much faster than a property with ground water contamination that requires cleanup and/or monitoring over time.



SECTION 4

7. **Property that I own has been contaminated by a source located on another property. Can I get a No Further Action determination letter from KDHE?**

Yes, provided the contamination is being addressed through KDHE or EPA programs and your property is not also a source for contamination.

8. **I have already conducted a soil and/or ground water investigation at my property without KDHE's oversight. Must I re-investigate my property following acceptance into the VCPRP?**

Prior environmental investigations of a property by a qualified environmental professional should not have to be repeated; however, KDHE may request some limited verification sampling to validate the prior investigation data before accepting it. Noting that investigations vary in scope, a prior investigation may not be adequately complete and some additional investigation may be necessary to meet the needs of the VCPRP.

9. **What obligations does the Voluntary Agreement establish for the voluntary party and KDHE?**

KDHE and the voluntary party agree to cooperate to investigate and (if necessary) clean up the environmental contamination at a property. The voluntary party agrees to pay for the investigation, cleanup, and KDHE oversight. KDHE will not take any other environmental regulatory action with regards to the contamination in question at the property and, once a voluntary cleanup has been accomplished, KDHE may issue a No Further Action determination, if appropriate.

10. **How is the subject property identified in the VCPRP process? Can the subject property consist of only a portion of a larger property?**

Property must be identified by legal description and a survey map prepared by a Kansas-licensed surveyor. A legal survey map does not necessarily have to be prepared at the time of application but will be required immediately prior to receiving an NFA; KDHE has developed a policy that provides various options to satisfy the legal survey map requirement. Portions of a larger property may be considered provided they otherwise meet eligibility requirements.

11. **Will cleanup standards be based on specific predetermined cleanup goals or may risk-based corrective actions be taken?**

Where cleanup is required, cleanup goals may be based on specific predetermined risk-based cleanup standards established by KDHE and published in the current edition of the Risk-Based Standards for Kansas, RSK Manual, or site-specific risk analysis performed in accordance with KDHE guidance may be used to establish corrective action goals. KDHE will approve final cleanup requirements for the property.



12. If I sign a Voluntary Agreement for my property, may I later leave the program?

Yes. Voluntary parties may leave the VCPRP at any time following notice to KDHE provided they pay all KDHE oversight costs due and the property presents no greater threat to human health or the environment than when the agreement was signed. If the voluntary party terminates the agreement, KDHE may then choose to address the contamination through another program.

13. Will I be admitting liability for environmental contamination if I apply to the VCPRP?

No. The Voluntary Agreement specifically states that the voluntary party admits no liability for contamination that may be at the property; rather, they agree to cooperate with KDHE to investigate and clean up (if necessary) the contamination so that the subject property may be returned to productive use or sold.

14. Can KDHE unilaterally terminate the Voluntary Agreement?

KDHE may terminate a Voluntary Agreement following appropriate notice if the voluntary party fails to comply with the agreement, fails to pay required oversight costs, or if the contamination is discovered upon investigation to be a significant or immediate threat to human health or the environment.

15. I am the owner of a contaminated property that I would like to redevelop, but I have no money. Will KDHE provide funds to clean up my property?

No. The VCPRP does not provide funding to investigate or cleanup contaminated property. The program is funded through fees from voluntary parties that pay all KDHE oversight costs. However, other programs exist that may be able to assist with funding for redevelopment. For example, there may be some reimbursement potential for work conducted under the VCPRP on certain agricultural-related properties through the Kansas Agricultural Remediation Board (KARB). See Question No. 18 for details.

16. My property was contaminated by the lessee. If my property is cleaned up under the VCPRP, will I be protected if the lessee releases (or if I release) more contamination?

No. Completing a Voluntary Cleanup and receiving a No Further Action determination from KDHE only applies to the contamination addressed through the VCPRP and the final decision to issue the No Further Action determination is based on data available at that time. Releases and resulting contamination at a property occurring after the No Further Action determination is issued are not included and will be handled as a separate issue. Reapplication to the VCPRP may be necessary for releases occurring subsequent to an NFA.



SECTION 4

- 17. Can KDHE or the U.S. Environmental Protection Agency (EPA) require further environmental action at my property once I receive a No Further Action determination?**

Not for the contamination or conditions covered by the No Further Action determination. If environmental conditions at the property change or if new contamination not covered by the No Further Action is discovered at a property, further actions may be necessary to address the contamination. The EPA and KDHE have entered into a Memorandum of Agreement (MOA) whereby the EPA has agreed to honor the environmental determinations made by KDHE under the VCPRP and certain other KDHE environmental programs.

- 18. What is the Kansas Agricultural Remediation Board (KARB)?**

The Kansas Agricultural Remediation Board (KARB) was created by the Kansas Agricultural Remediation Act, passed by the Kansas Legislature in 2000. This act created the Kansas agricultural remediation program for reimbursing eligible parties for investigation and remediation costs incurred under KDHE programs, such as the VCPRP, after July 1, 1997. The remediation fund was created by assessing an annual fee on pesticide products, pesticide dealers, grain storage, fertilizer products and custom blenders. The fund is managed by a seven-member board appointed by the governor.

If your agricultural related business is addressing contamination under a KDHE remedial program such as the VCPRP, you should contact the KARB directly to obtain the latest information on your possible eligibility for reimbursement and the application process. Their address is: KARB, 816 SW Tyler, Topeka, Kansas 66612. Their phone is (785) 440-0356 and FAX is (785) 234-2930. KARB also has a web page address at: www.karb.org. Remember that eligible costs incurred after September 1, 2001, must be submitted to KARB for reimbursement within 2 years.

- 19. May I include contamination from underground storage tanks in my VCPRP activities?**

KDHE recommends that all contamination from underground storage tanks eligible for activities under the Kansas Petroleum Storage Tank Release Trust Fund be addressed under that program. If for some reason you do wish to include contamination from underground storage tanks as part of the VCPRP, it is an option.

- 20. I am applying to the VCPRP to address possible environmental contamination at my property. I would like to expedite activities at my property and work closely with KDHE throughout the process. Would an early meeting with KDHE to discuss the VCPRP process be a wise move on my part?**

Yes, definitely! Shortly after the Voluntary Agreement you sign is executed (signed) by the Secretary of KDHE, you will receive a copy of the executed agreement along with a letter that assigns a KDHE Project Manager. Immediately call that Project Manager and arrange for a



meeting. If you already have a consultant, bring them along. Otherwise, you may wish to discuss the selection of a qualified environmental consultant with your KDHE Project Manager. Contact your KDHE Project Manager early and often to expedite the VCPRP process.

21. Will KDHE help me select a qualified environmental professional?

KDHE obviously cannot recommend one consultant over another. KDHE will provide, upon your request, a list of environmental professionals who have worked for clients under various KDHE programs. Refer to Section 11 of the VCPRP Manual on choosing a consultant and make your selection carefully based on the previous work record of the consultant in dealing with the specific environmental conditions at your property. The work of the KDHE Project Managers is to provide official oversight of the environmental activities at the property to the end that KDHE will be able to issue a final No Further Action determination. The KDHE Project Managers cannot perform the services provided by consultants.

While specific requirements for state licensing of environmental professionals are not contained in the Voluntary Cleanup and Property Redevelopment Act nor in KDHE regulations adopted to implement the Act, Kansas law does require that anyone offering services to the public as an environmental or geotechnical geologist (not oil field related) or engineer in Kansas be appropriately licensed by the Kansas Board of Technical Professions.

22. My property is in a small town that obtains its drinking water supply from the shallow aquifer. Will I be eligible for the VCPRP?

Bureau of Environmental Remediation Policy #BER-RS-VCP-002 specifies that at the time of application, if it is known that contamination from your property is impacting or threatening to impact active public or private drinking water wells, the property is not eligible for the VCPRP but must be addressed under the State Cooperative Program. However, if prior to application a voluntary party or other entity has connected the impacted or threatened users to a permanent drinking water supply or the impacted or threatened wells are deemed inactive, the property may be eligible for the VCPRP.

23. My company has 10 properties where our crude petroleum gathering pipe lines have leaked crude to the environment. We would like to resolve environmental issues at all of these properties through the VCPRP, but the initial deposits for the properties would represent a large cash outlay for our small company. Can you help us?

Yes. Bureau of Environmental Remediation policy #BER-RS-VCP-001 states that four or more similar eligible properties located in the same general area of the state may be entered into the VCPRP simultaneously. The initial deposit may be established as \$1,000.00 per property. The initial deposit will remain in your account as a cash balance provided you agree to pay



SECTION 4

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

KDHE oversight costs that will be tracked and billed quarterly for each individual property. The initial deposit may be refundable upon receiving a No Further Action determination for each of the properties entered together as a group. Contact the VCPRP Coordinator at (785) 296-1665 to discuss the possibility of applications for multiple properties.

24. What is an Environmental Use Control (EUC), how do EUCs differ from institutional controls, and how can it be used within the VCPRP?

Institutional controls have been used as part of cleanup strategies in the environmental universe for many years and typically involve restrictions on uses of a property, prohibitions on installing drinking water wells, engineered structures such as caps over contamination left in place, and other similar mechanisms employed to prevent unacceptable exposures to contamination at a property. These restrictions were typically implemented through filing deed restrictions or restrictive covenants on the title or deed for the property. Kansas Administrative Regulation, K.A.R. 28-71-11(g) describes the use of institutional controls as part of cleanup alternatives acceptable for the VCPRP. Effective July 1, 2003, new legislation was enacted establishing KDHE's authority to establish an Environmental Use Control (EUC) Program. EUCs are essentially the same as institutional controls in terms of restrictions on property use or maintenance of protective structures and are implemented similarly by filing an EUC Agreement containing the site-specific restrictions or controls on the title of a property. The EUC Agreement is a written agreement between a voluntary party and KDHE. The EUC Program involves a fee paid to KDHE to provide continued inspection, monitoring, and tracking of EUCs implemented in Kansas. EUCs can be used as part of cleanup alternatives in place of institutional controls as discussed in the mentioned regulation. Prior to enactment of the EUC law, there was no guarantee that institutional controls placed on a property would remain in perpetuity and survive ownership changes. EUCs provide assurance that controls placed on a property in perpetuity are tracked, inspected, and verified to remain in effect even if the property ownership changes. The EUC law also provides enforcement authority should an EUC Agreement be violated which will aid in protection of public health and the environment.

SECTION 5

VCPRP

APPLICATION

AND

INSTRUCTIONS





SECTION 5

VCPRP APPLICATION AND INSTRUCTIONS



**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION**

**VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT
PROGRAM**



--APPLICATION TO PARTICIPATE--

INTRODUCTION

Effective July 1, 1997, the State of Kansas issued new laws establishing the **Voluntary Cleanup and Property Redevelopment Act**, K.S.A. 65-34,161 *et seq.* The Voluntary Cleanup and Property Redevelopment Program, referred to as the "**VCPRP**", has been developed by the Kansas Department of Health and Environment (KDHE) to implement K.S.A. 65-34,161 *et seq.* This application package (application form and instructions) provides the necessary direction for application to the VCPRP.

APPLICATION AND INFORMATION SUBMITTED

The completed application and information submitted with the application will be used by KDHE to determine an applying property's eligibility for participation in the VCPRP. ***Please be sure to include a map with the application that clearly depicts the property boundaries.***

APPLICATION FEE

In accordance with K.S.A. 65-34,161 *et seq.*, a non-refundable application fee of \$200 must be submitted with the VCPRP Application Form. It is very important that this fee be submitted with the application; otherwise, the application will be returned to the applicant as incomplete.

*Make checks payable to: **Kansas Department of Health and Environment VCPRP***

WHERE TO SEND APPLICATION

Send completed application, supporting information, and the \$200 application fee to:

VCPRP Coordinator
Kansas Department of Health and Environment
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367

KDHE REVIEW AND RESPONSE TO AN APPLICATION

KDHE has **60 days** from receipt of a complete application to determine a property's eligibility for participation in the VCPRP. Incomplete applications may be returned to the applicant with specific identification of incomplete items. The applicant has 30 days to submit a revised and/or completed application to KDHE. If the application is complete upon resubmittal, KDHE will finish its review and provide the eligibility determination to the applicant. If the application is still not complete upon resubmittal, KDHE will deny and return the application to the applicant; if the applicant still wishes to participate in the VCPRP, the applicant will be required to reapply and include another \$200 application fee. **It is very important to ensure an application is completed in accordance with the instructions the first time!**

QUESTIONS ON ELIGIBILITY AND/OR COMPLETING THE APPLICATION

Call the VCPRP Coordinator at (785)296-1665.



SECTION 5

APPLICATION INSTRUCTIONS

SECTION I

PROPERTY INFORMATION

Name	Provide a name for the property. The name may be based on an owner's name, current or historical operations, or the general location of the property.
Property Location	Provide a street address of the property. Also include the legal description of the property and/or a tax lot number, if one exists, which identifies the property. Tax lot numbers may be obtained from the city or county tax appraiser's office. Include a map that clearly depicts the property boundaries.
Historical Use	Provide a complete and specific description of the historical use of the property. An example would be: <i>agricultural, farmed land (until 1978); industrial, producing wood furniture (1978 to 1990); industrial, machine shop and metal plating (1990 to 1994); industrial, automotive parts fabrication (1994 to 1996).</i>
Current Use	Describe current activities at the property. An example: <i>"No current activities. Last operation at facility ceased in 1996."</i>
Future Use	If known, describe the intended future use of the property.
Surrounding Land Use	Check all boxes describing the land use in the area surrounding and immediately adjacent to the property.

SECTION II

APPLICANT INFORMATION

Applicant Name	Provide the name of the person(s) making application to the VCPRP.
Organization/Title	If the applicant is representing an organization, trust, company, or another individual, indicate the name of the organization and the applicant's title as representative.
Contact Information	Provide the applicant's mailing address and direct telephone number; include a fax number if available.
Applicant's Interest	Check all boxes that describe the applicant's interest in or relation to the property.
Owner Information	As stated on the application form, if the applicant is not the owner of the property, identify the property owner and provide the requested information.

SECTION III

NATURE OF POTENTIAL CONTAMINATION

Chemical Products/ Wastes On Site	Check box(es) to indicate the general category(s) of chemical products and/or wastes handled, stored or disposed on the property. Check boxes for all categories applicable to the property regardless of whether a category of chemical is considered a potential source for contamination. Check the "Other" box and list any other chemical products or wastes for which descriptors are not provided.
Media Potentially Contaminated	Check the appropriate boxes to indicate the environmental media potentially contaminated at the property; also check a box to indicate whether contamination of a given medium is confirmed or suspected. An example would be a property in an area where shallow ground water is known to be present and there are no nearby surface water courses or drainages; a spill of solvent onto the ground is confirmed.
Source of Contaminants	Check the appropriate boxes to indicate the known or suspected sources for the contamination at the property.
Description of Problem	Provide a brief description of the contamination problem at the property. The description should provide a clear basis for why the subject property is proposed to be addressed through the VCPRP.



SECTION 5

APPLICATION INSTRUCTIONS

SECTION III (Continued):

Listing of Contaminant Compounds

Provide a list of contaminants detected at the property, with the maximum concentrations detected, and identify the media in which each contaminant was detected. Attach additional sheets for the list, if necessary, and include laboratory reports for sampling conducted at the property.

Investigative Work Conducted

Check the appropriate box(es) to indicate if environmental investigations have been conducted at the property. If some investigation has been done, check the box(es) indicating the level of investigation conducted to date. Provide the name of the entity that conducted the investigative work.

IMPORTANT! Copies of investigative reports, assessments, analytical results, and/or associated information must be submitted to KDHE with the VCPRP Application Form. If environmental investigations have been conducted, the application will be considered incomplete unless the investigative reports and/or associated information are provided with the application (see Misc. Instructions).

SECTION IV ELIGIBILITY INFORMATION

Please check the appropriate box to answer each of the questions listed in this section.

CERCLA Investigation

Indicate if any investigations have been conducted relative to the property under the auspices of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also referred to as Superfund. These investigations are usually conducted by the United States Environmental Protection Agency (EPA), its contractors, or the State of Kansas.

CERCLA/NPL Listing

Indicate if the property, or any portion of the property, has ever been listed or proposed for listing on the National Priorities List (NPL) established under CERCLA. Contaminated sites that have been listed on the NPL are usually referred to as "Superfund Sites".

Enforcement Action

Indicate if the property is currently subject to an enforcement action issued pursuant to city, county, state, or federal environmental laws. Enforcement actions are generally interpreted as orders or civil lawsuits issued by governmental entities requiring action be taken to remedy an issue of non-compliance with environmental laws.

Environmental Orders/Agreements

Indicate if the property is currently subject to an environmental order or agreement (e.g., Consent Order/Agreement, Interim Agreement, Letter Agreement, etc.) with a city, county, state, or federal governmental agency. This particular question does not pertain to permits issued by governmental entities to conduct regulated activities at a property or facility.

RCRA Permit

Indicate if the property has, or has ever had, a RCRA Permit or RCRA Interim Status. If the answer is yes, please provide the requested information including: 1) type of permit, such as a permit for treatment, storage, and/or disposal (active or post closure); 2) EPA Identification Number; 3) the date the permit was issued; and 4) the expiration date of the permit.

Waste Generator

Indicate if there are any past or current activities conducted at the property that required classification as an EPA or Kansas Hazardous Waste Generator. If a facility or operation on the property was or is classified as a hazardous waste generator, enter the applicable identification number where indicated.

Oil & Gas Activities

Indicate whether oil and gas production activities regulated by the Kansas Corporation Commission have been conducted at the property.

Immediate Risk

Respond by indicating if, to the best of your knowledge, contamination at the property poses an immediate risk of harm to human health or the environment.

Potential Impact to Drinking Water Supplies

Indicate if contamination at the property has the potential to impact, or already has impacted, public or private drinking water wells or surface water supply sources such as supply intakes on lakes or streams.



SECTION 5

APPLICATION INSTRUCTIONS

MISCELLANEOUS INSTRUCTIONS AND INFORMATION

Please note the following additional information and clarification for submitting the VCPRP application:

- 1) **Section II, Applicant Information.** If the applicant is not the owner of the property described in Section I, documentation is required with the application verifying that the applicant has access to or control of the property. Documentation can include lease agreements, contracts, or other legal documents indicating the applicant has access to or control of the property, or simply written confirmation from the owner that the applicant has access for purposes of conducting VCPRP activities.
- 2) **Section III, Nature of Potential Contamination.** As stated in Section III, copies of all investigative reports and sampling data must be submitted with the application. This would strictly apply to sites/properties that are newly identified to KDHE. Regarding existing sites/properties for which reports and sampling data are currently on file with KDHE, the applicant can resubmit the reports and data, or simply attach a listing of documents (document title, date, prepared by, etc.) KDHE is to reference when reviewing the application to determine eligibility.
- 3) **Site Maps/Legal Maps.** As stated in Section I, a map that clearly identifies property boundaries must be included with the application. KDHE recommends the site map include the entire property, or specific portion intended to be addressed through the VCPRP as KDHE's No Further Action (NFA) determination will only be issued for the property (or specific portion) identified in the application. In addition, KDHE will require that a legal map of the property be submitted prior to issuing a NFA determination. A legal map is considered to be a map, plat, etc., that depicts the legal boundaries of the property for which the NFA will be issued, such as maps prepared by a Registered Land Surveyor. It is not necessary to conduct a legal survey for the purposes of submitting an application; however, the legal map will be required prior to KDHE's issuance of the NFA determination.
- 4) **Refund of Remaining Deposit Balance.** KDHE must be provided a Federal Tax I.D. number, or a Social Security Number for an individual, prior to refunding the remaining deposit balance upon mutual termination of a Voluntary Agreement. This information is not necessary for the application process, but will be necessary should a refund be required in the future.



SECTION 5



KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
Application to Participate
VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT
PROGRAM



Application Form Instructions: Please type or print legibly. Incomplete applications and/or applications not accompanied by the required \$200 may be returned to the applicant. If any of the information requested is not applicable, enter "NA" in the blank. **VCPRP Application Form Page 1 of 3**

SECTION I PROPERTY INFORMATION

Property Name (facility or owner name) _____

Property Address _____

City (or Township) _____ County _____ Zip Code _____

Legal Description:

Township _____ South Range _____ (E/W) Section _____ Quarter(s) _____

Tax Lot # _____ Property Size (in acres) _____

* Please include a map that clearly depicts the property boundaries (see instructions).

Briefly describe the historical use of property with corresponding years of operation: _____

Current use of property: _____

Future use of property (if known): _____

Land use surrounding property (check most applicable description or combination of descriptions):

☐ Residential ☐ Industrial ☐ Commercial ☐ Agricultural ☐ Other (explain) _____**SECTION II APPLICANT INFORMATION**

Applicant Name _____ Title _____

Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Telephone (____) _____ Fax (____) _____

Applicant's interest in or relation to property (check all that apply):

☐ Owner of property☐ Operates facility on property☐ Previous owner of property☐ Previously operated facility on property☐ Prospective owner of property☐ Prospective facility owner or operator on property☐ Disposed of contaminants on property☐ Legal entity controlling property☐ Acquired by default (bankruptcy, tax delinquency, abandonment, or other circumstances)☐ Other _____

If Applicant is not the owner of the property, provide the following information:

Owner's Name _____ Organization _____

Owner's Mailing Address _____

City _____ State _____ Zip Code _____

Telephone (____) _____ Fax (____) _____



SECTION 5

Kansas Department of Health and Environment/Bureau of Environmental Remediation
Voluntary Cleanup and Property Redevelopment Program/Application to Participate

VCPRP Application Form Page 2 of 3

SECTION III NATURE OF POTENTIAL CONTAMINATION

Chemical products/ wastes present, used, or stored at the property (check all that you are aware of):

- | | | |
|--|--|---|
| <input type="checkbox"/> Solvents/degreasers | <input type="checkbox"/> Pesticides (herbicides, insecticides, etc.) | <input type="checkbox"/> Metals |
| <input type="checkbox"/> Petroleum products | <input type="checkbox"/> Inorganics (salt, soda ash, etc.) | <input type="checkbox"/> PCBs |
| <input type="checkbox"/> Acids/bases | <input type="checkbox"/> Fertilizer | <input type="checkbox"/> Other (list) _____ |
| <input type="checkbox"/> Paint/paint wastes | <input type="checkbox"/> Sludge | |

Media potentially contaminated (check all that apply and indicate if contamination is confirmed or suspected):

- | | | |
|--|------------------------------------|------------------------------------|
| <input type="checkbox"/> Surface Soil | <input type="checkbox"/> Confirmed | <input type="checkbox"/> Suspected |
| <input type="checkbox"/> Subsurface Soil | <input type="checkbox"/> Confirmed | <input type="checkbox"/> Suspected |
| <input type="checkbox"/> Ground Water | <input type="checkbox"/> Confirmed | <input type="checkbox"/> Suspected |
| <input type="checkbox"/> Surface Water | <input type="checkbox"/> Confirmed | <input type="checkbox"/> Suspected |

Known or suspected source(s) of contaminants (check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Surface spill or discharge | <input type="checkbox"/> Underground tank/piping | <input type="checkbox"/> Lagoons or ponds |
| <input type="checkbox"/> Dumping or burial of waste | <input type="checkbox"/> Above ground tank/piping | <input type="checkbox"/> Seepage Pit or dry well |
| <input type="checkbox"/> Septic tank/lateral field | <input type="checkbox"/> Pipeline release | <input type="checkbox"/> Source not known |
| <input type="checkbox"/> Drums or other storage containers | <input type="checkbox"/> Adjacent property | <input type="checkbox"/> Other (list) _____ |

Briefly describe the contamination problem on the property: _____

List the contaminants, maximum concentrations (if known), and media impacted (if known):

<u>Contaminant(s)</u>	<u>Maximum Concentration (state, or circle units)</u>	<u>Media</u>
_____	_____ (ppb/ppm)	_____
_____	_____ (ppb/ppm)	_____
_____	_____ (ppb/ppm)	_____
_____	_____ (ppb/ppm)	_____

(attach additional sheets if necessary)

Investigative work conducted at the property:

- | | |
|--|---|
| Has investigative work been conducted at the property? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Has an environmental audit been conducted? | Phase I <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Phase II <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Have other investigations/sampling been conducted? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Are water wells or monitoring wells located on the property? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Who conducted the investigation? | _____ |

(Copies of all investigative reports and sampling data must be attached and submitted with application)



SECTION 5

Kansas Department of Health and Environment/Bureau of Environmental Remediation
Voluntary Cleanup and Property Redevelopment Program/Application to Participate

VCPRP Application Form Page 3 of 3

SECTION IV ELIGIBILITY INFORMATION

- ☐ Yes ☐ No ☐ Unknown Has a CERCLA investigation been conducted on the property?
- ☐ Yes ☐ No ☐ Unknown Has the property ever been listed, or proposed for listing, on the National Priorities List of Superfund sites established under CERCLA?
- ☐ Yes ☐ No ☐ Unknown Is the property, owner, operator, etc., currently subject to enforcement action issued pursuant to city, county, state, or federal environmental laws?
- ☐ Yes ☐ No ☐ Unknown Is the property currently the subject of environmental orders or agreements with city, county, state, or federal governmental agencies?
- ☐ Yes ☐ No ☐ Unknown Does the property have, or has the property ever had, a RCRA Permit or RCRA Interim Status? If so, provide the following information:

Type (Permit)	Identification Number	Date Issued	Expiration

- ☐ Yes ☐ No ☐ Unknown Are or were there activities conducted at the property requiring classification as an EPA or Kansas Hazardous Waste Generator? Provide the Hazardous Waste Generator Identification Number: I.D.# _____
- ☐ Yes ☐ No ☐ Unknown Have activities that are regulated by the Kansas Corporation Commission been conducted at the property?
- ☐ Yes ☐ No ☐ Unknown Does contamination at the property pose an immediate risk of harm to human health or the environment?
- ☐ Yes ☐ No ☐ Unknown Does contamination at the property threaten or impact public or private drinking water wells or surface water used for drinking water supply?

SECTION V APPLICATION TO PARTICIPATE TERMS/APPLICATION SIGNATURE

The undersigned requests technical oversight, guidance and/or assistance from the Kansas Department of Health and Environment (KDHE)/Bureau of Environmental Remediation (BER) with investigation and cleanup of contamination at the property for which this application is being made. A nonrefundable application fee of \$200 is enclosed to cover processing and application review costs incurred by KDHE.

BER shall determine, and notify the undersigned accordingly, if the subject property is eligible for the Voluntary Cleanup and Property Redevelopment Program (VCPRP). If the subject property is determined eligible to participate in the VCPRP, the undersigned shall sign and submit to BER a Voluntary Agreement within 30 days of receiving the Voluntary Agreement from BER.

Execution of this application form does not constitute a Voluntary Agreement, and the undersigned shall not be bound to proceed with the voluntary action. By completing and signing this application, the undersigned does not admit or assume liability for investigation or cleanup of the property. The undersigned may terminate this Application for Participation at any time by notifying BER.

The application, attachments and \$200 nonrefundable fee (made payable to the Kansas Department of Health and Environment) should be submitted to:

Voluntary Cleanup Coordinator, Remedial Section
Kansas Department of Health and Environment
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367

Name: _____ (print or type) Title: _____

Signature: _____ Date: _____

SECTION 6

VCPRP

STATUTES





SECTION 6

VCPRP STATUTES

65-34,154

PUBLIC HEALTH

or decision, make a written request for a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any final action of the secretary pursuant to this act may obtain a review of the action in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 1995, ch. 162, § 13; L. 1999, ch. 102, § 8; July 1.

65-34,154. Annual report to legislature.

On or before the first day of the regular legislative session each year, the secretary shall submit to the members of the standing committee on energy and natural resources of the senate and to the members of the standing committee on environment of the house of representatives a report regarding:

(a) Receipts of the fund during the preceding calendar year and the sources of the receipts;

(b) disbursements from the fund during the preceding calendar year and the purposes of the disbursements;

(c) the extent of corrective action taken under this act during the preceding calendar year; and

(d) the prioritization of sites for expenditures from the fund.

History: L. 1995, ch. 162, § 14; L. 1998, ch. 182, § 25; May 21.

65-34,155. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end, the provisions of this act are severable.

History: L. 1995, ch. 162, § 15; July 1.

65-34,156 to 65-34,160. Reserved.**VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT****Law Review and Bar Journal References:**

"The Voluntary Cleanup and Property Redevelopment Act—The Limits of the Kansas Brownfields Law," Eric D. Madden, 46 K.L.R. 593 (1998).

65-34,161. Title and application. This act shall be known and may be cited as the voluntary cleanup and property redevelopment act and shall apply to real property where environmental cleanup may be needed.

History: L. 1997, ch. 137, § 1; July 1.

Law Review and Bar Journal References:

"Avondale Federal Savings Bank v. Amoco Oil Co.: No Equity in Sight for RCRA Victims," Dennis B. Danello, 48 K.L.R. 663 (2000).

65-34,162. Definitions. As used in this act:

(a) "Contaminant" means such alteration of the physical, chemical or biological properties of any soils and waters of the state as will or is likely to create a nuisance or render such soils or waters potentially harmful, or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state.

(b) "Department" means the department of health and environment.

(c) "Secretary" means the secretary of health and environment.

History: L. 1997, ch. 137, § 2; July 1.

65-34,163. Rules and regulations. The secretary may adopt rules and regulations necessary to define, administer and enforce the provisions of this act.

History: L. 1997, ch. 137, § 3; July 1.

65-34,164. Voluntary application; application of other laws; eligible property. (a) The program established in this act shall be voluntary and may be initiated by submission of an application to the department for properties where investigation and remediation may be necessary to protect human health or the environment based upon the current or proposed future use or redevelopment of the property.

(b) Property which may be eligible for reimbursement from trust funds established in the Kansas storage tank act, K.S.A. 65-34,100 et seq., and amendments thereto, or the Kansas drycleaner environmental response act, K.S.A. 65-34,141 et seq., and amendments thereto, shall meet all of the requirements of the respective act.

(c) The provisions of this act shall not apply to:

(1) Property that is listed or proposed for listing on the national priorities list of superfund sites established under the comprehensive environmental response, compensation, and liability act (CERCLA), 42 U.S.C.A. 9601 et seq.;

(2) property the contaminated portion of which is the subject of:

(A) Enforcement action issued pursuant to city, county, state or federal environmental laws; or



SECTION 6

SOLID AND HAZARDOUS WASTE

65-34,165

(B) environmental orders or agreements with city, county, state or federal governmental agencies;

(3) a facility which has or should have a permit pursuant to the resource, conservation and recovery act (RCRA), 42 U.S.C.A. 6901 et seq., which contains a corrective action component;

(4) oil and gas activities regulated by the state corporation commission;

(5) property that presents an immediate and significant risk of harm to human health or the environment; or

(6) property that the department determines to be a substantial threat to public or private drinking water wells.

History: L. 1997, ch. 137, § 4; July 1.

Law Review and Bar Journal References:

"The Voluntary Cleanup and Property Redevelopment Act—The Limits of the Kansas Brownfields Law," Eric D. Madden, 46 K.L.R. 593 (1998).

CASE ANNOTATIONS

1. Kansas voluntary cleanup and property development act does not apply to federal superfund sites. *City of Wichita v. Aero Holdings, Inc.*, 177 F.Supp.2d 1153, 1172 (2000).

65-34,165. Application; fee; action on; agreement; deposit; access to property; termination of agreement; fund, use and disposition of. (a) Each application or reapplication for participation in the voluntary program shall be accompanied by a nonrefundable application fee of \$200 to cover processing costs.

(b) The department shall review and approve or deny all applications.

(c) The department shall notify the applicant in writing, whether the application is approved or denied. If the application is denied, the notification shall state the reason for the denial.

(d) Following departmental approval of an application, a voluntary agreement in accordance with this act must be executed between the participant and the department. The department shall not commence oversight and review activities until the voluntary agreement is executed.

(e) As part of the voluntary agreement, the department shall require the applicant to post a deposit not to exceed \$5,000. The deposit shall be used to cover all direct and indirect costs of the department in administration of the program, including but is not limited to providing technical review, oversight and guidance in relation to the property covered in the application. If the costs of the department exceed the initial deposit, an additional amount agreed upon by the department

and the applicant will be required prior to proceeding with any voluntary work under the program. Timely remittance of reimbursements to the department is a condition of continuing participation. After the mutual termination of the voluntary agreement, the department shall refund any remaining balance within 60 days.

(f) During the time allocated for review of applications, assessments, other investigative activities and remedial activities under this act, the department, upon reasonable notice to the applicant, shall have access at all reasonable times to the subject real property.

(g) The applicant may unilaterally terminate the voluntary agreement prior to completion of investigative and remedial activities if the applicant leaves the site in no worse condition, from a human health and environmental perspective, than when the applicant initiated voluntary activities. The applicant must notify the department in writing of the intention to terminate the voluntary agreement. The department will cease billing for review of any submittal under the voluntary agreement upon receipt of notification. Within 90 days after receipt of notification for termination, the department shall provide a final bill for services provided. If the applicant requests termination of the voluntary agreement under this subsection, initial deposits are not refundable. In the event the department has costs in excess of the initial deposit, the applicant must remit full payment of those costs. Upon payment of all costs, the department shall notify the applicant in writing that the voluntary agreement has been terminated.

(h) The department may terminate the voluntary agreement if the applicant:

(1) Violates any terms or conditions of the voluntary agreement or fails to fulfill any obligations of the voluntary agreement; or

(2) fails to address an immediate and significant risk of harm to public health and the environment in an effective and timely manner.

The department shall notify the applicant in writing of the intention to terminate the voluntary agreement and include a summary of the costs of the department. The notification shall state the reason or reasons for the termination:

(i) There is established a fund in the state treasury the voluntary cleanup fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Moneys collected for application fees;



SECTION 6

65-34,166

PUBLIC HEALTH

(2) moneys collected as deposits for costs associated with administration of the act, including technical review, oversight and guidance;

(3) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund; and

(4) interest attributable to the investment of moneys in the fund.

(j) Moneys in the voluntary cleanup fund shall only be expended for costs of:

(1) Review of applications;

(2) technical review, oversight, guidance and other activities necessary to carry out the provisions of this act;

(3) activities performed by the department to address immediate or emergency threats to human health and the environment related to a property under this act; and

(4) administration and enforcement of the provisions of this act.

(k) On or before the 10th of each month following the month in which moneys are first credited to the voluntary cleanup fund, and monthly thereafter on or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the voluntary cleanup fund interest earnings based on:

(1) The average daily balance of moneys in the voluntary cleanup fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(1) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

History: L. 1997, ch. 137, § 5; July 1.

Law Review and Bar Journal References:

"The Voluntary Cleanup and Property Redevelopment Act—The Limits of the Kansas Brownfields Law," Eric D. Madden, 46 K.L.R. 593 (1998).

65-34,166. Remedial action; determination whether required; plan. (a) The department shall review reports, including any environmental assessments and investigations submitted by the applicant, and make a determination as to any required actions. If the department determines that no remedial action is necessary, the department may issue a no further

action determination pursuant to K.S.A. 65-34,169.

(b) If the department determines that further investigation or remediation is required, the applicant shall submit to the department a voluntary cleanup plan that follows the scope of work prepared by the department for voluntary investigation or remediation and includes the actions necessary to address the contamination.

History: L. 1997, ch. 137, § 6; July 1.

Law Review and Bar Journal References:

"The Voluntary Cleanup and Property Redevelopment Act—The Limits of the Kansas Brownfields Law," Eric D. Madden, 46 K.L.R. 593 (1998).

65-34,167. Same; alternatives; factors considered. Remedial alternatives shall be based on the actual risk to human health and the environment currently posed by contaminants on the property, considering the following factors:

(a) The present and proposed future uses of the property and surrounding properties;

(b) the ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels which exceed applicable state standards and guidelines or the results of a risk analysis if such standards and guidelines are not available; and

(c) the potential risks associated with proposed cleanup alternatives and the reliability and economic and technical feasibility of such alternatives.

History: L. 1997, ch. 137, § 7; July 1.

65-34,168. Plan; approval or disapproval; procedures; approval void, when; verification of implementation. (a) The department shall provide formal written notification to the applicant that a voluntary cleanup plan has been approved or disapproved within 60 days of submittal of the voluntary cleanup plan by the applicant unless the department extends the time for review to a date certain.

(b) The department shall approve a voluntary cleanup plan if the department concludes that the plan will attain a degree of cleanup and control of contaminants that complies with all applicable statutes and rules and regulations.

(c) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. If the department disapproves a voluntary cleanup plan based upon the



SECTION 6

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

SOLID AND HAZARDOUS WASTE

65-34,169

applicant's failure to submit the information required, the department shall notify the applicant of the deficiencies in the information submitted.

(d) The approval of a voluntary cleanup plan by the department applies only to those contaminants and conditions identified on the property based upon the statutes and rules and regulations that exist when the application is submitted.

(e) Upon determination by the department that a voluntary cleanup plan is acceptable, the department shall publish a notice of the determination in a local newspaper of general circulation in the area affected and make the voluntary cleanup plan available to the public. The public shall have 15 days from the date of publication during which any person may submit to the department written comments regarding the voluntary cleanup plan. After 15 days have elapsed, the department may hold a public information meeting if, in the department's judgment, the comments submitted warrant such a meeting or if the applicant requests such a meeting. Upon completion of the public notification and participation process, the department shall make a determination to approve the plan in accordance with this section.

(f) Departmental approval of a voluntary cleanup plan shall be void upon:

(1) Failure of an applicant to comply with the approved voluntary cleanup plan;

(2) willful submission of false, inaccurate or misleading information by the applicant in the context of the voluntary cleanup plan; or

(3) failure to initiate the plan within 6 months after approval by the department, or failure to complete the plan within 24 months after approval by the department, unless the department grants an extension of time.

(g) An applicant desiring to implement a voluntary clean up plan after the time limits prescribed by subsection (f)(3) have expired shall submit a written petition for reapplication accompanied by written assurances from the applicant that the conditions on the subject property are substantially similar to those existing at the time of the original approval. Reapplications shall be reviewed by the department. Any reapplication that involves property upon which the condition has substantially changed since approval of the original voluntary cleanup plan shall be treated as a new application and shall be subject to all the requirements of this act.

(h) Within 45 days after the completion of the voluntary cleanup described in the approved voluntary cleanup plan, the applicant shall provide to the department assurance that the plan has been fully implemented. A verification sampling program shall be required by the department to confirm that the property has been cleaned up as described in the voluntary cleanup plan.

History: L. 1997, ch. 137, § 8; July 1.

Law Review and Bar Journal References:

"The Voluntary Cleanup and Property Redevelopment Act—The Limits of the Kansas Brownfields Law," Eric D. Madden, 46 K.L.R. 593 (1998).

65-34,169. Determination no further action required; issuance; void, when. (a) After an applicant completes the requirements of this act, the department may determine that no further remedial action is required. Within 60 days after such completion, unless the applicant and the department agree to an extension of the time for review, the department shall provide written notification that a no further action determination has been made.

(b) (1) The department may consider in issuing this determination that contamination or a release of contamination originates from a source on adjacent property upon which the necessary action which protects human health and the environment is or will be taken by a viable and financially capable person or entity which may or may not be legally responsible for the source of contamination.

(2) The department shall provide written notification of a no further action determination.

(3). The issuance of a no further action determination by the department applies only to identified conditions on the property and is based upon applicable statutes and rules and regulations that exist as of the time of completion of the requirements.

(c) The department may determine that the no further action determination, under this section is void if:

(1) There is any evidence of fraudulent representation, false assurances, concealment or misrepresentation of the data in any document to be submitted to the department under this act;

(2) the applicant agrees to perform any action approved by the department and fails to perform such action;



SECTION 6

65-34,170

PUBLIC HEALTH

(3) the applicant's willful and wanton conduct contributes to known environmental contamination; or

(4) the applicant fails to complete the voluntary actions required in the voluntary cleanup plan.

(d) If a no further action determination is not issued by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial.

History: L. 1997, ch. 137, § 9; July 1.

Law Review and Bar Journal References:

"The Voluntary Cleanup and Property Redevelopment Act—The Limits of the Kansas Brownfields Law," Eric D. Madden, 46 K.L.R. 593 (1998).

65-34,170. Environmental assessments, preparer. The department may accept only environmental assessments under this act prepared by a qualified environmental professional, as defined by rules and regulations adopted by the secretary.

History: L. 1997, ch. 137, § 10; July 1.

Law Review and Bar Journal References:

"The Voluntary Cleanup and Property Redevelopment Act—The Limits of the Kansas Brownfields Law," Eric D. Madden, 46 K.L.R. 593 (1998).

65-34,171. Application of other laws; EPA involvement. (a) Nothing in this act shall absolve any person from obligations under any other law or rule and regulation, including any requirement to obtain permits or approvals for work performed under a voluntary cleanup plan.

(b) If the federal environmental protection agency (EPA) indicates that it is investigating a property which is the subject of an approved voluntary cleanup plan, the department shall attempt to obtain agreement with the EPA that the property be addressed under the appropriate state program or, in the case of property being addressed through a voluntary cleanup plan, that no further federal action be taken with respect to the property at least until the voluntary cleanup plan is completely implemented.

History: L. 1997, ch. 137, § 11; July 1.

65-34,172. Plan; enforcement; use of information as basis of other enforcement actions. (a) Voluntary cleanup plans are not enforceable against an applicant unless the department can demonstrate that an applicant who initiated a voluntary cleanup under an approved plan has failed to fully implement that plan. In that case, the department may require further ac-

tion if such action is authorized by other state statutes administered by the department or rules and regulations of the department.

(b) Information provided by an applicant to support a voluntary cleanup plan shall not provide the department with an independent basis to seek penalties from the applicant pursuant to applicable statutes or rules and regulations. If, pursuant to other applicable statutes or rules and regulations, the department initiates an enforcement action against the applicant subsequent to the submission of a voluntary cleanup plan regarding the contamination addressed in the plan, the voluntary disclosure of the information in the plan shall be considered by the enforcing authority to mitigate penalties which could be assessed to the applicant.

History: L. 1997, ch. 137, § 12; July 1.

65-34,173. Annual report. The department shall publish annually in the Kansas register a summary of the number of applicants, the general categories of those applicants and the number of cleanups completed pursuant to this act.

History: L. 1997, ch. 137, § 13; July 1.

65-34,174. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

History: L. 1997, ch. 137, § 14; July 1.

Law Review and Bar Journal References:

"Avondale Federal Savings Bank v. Amoco Oil Co.: No Equity in Sight for RCRA Victims," Dennis B. Danello, 48 K.L.R. 663 (2000).

**Article 34a.—CENTRAL INTERSTATE
LOW-LEVEL RADIOACTIVE WASTE
COMPACT**

Attorney General's Opinions:

Consequences of compact membership. 87-43.

Central interstate low-level radioactivity waste compact; state liability. 90-34.

65-34a01. Central interstate low-level radioactive waste compact. The central interstate low-level radioactive waste compact is hereby entered into and enacted into law in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

The party states recognize that each state is re-



sponsible for the management of its nonfederal low-level radioactive wastes. They also recognize that the Congress, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573) has authorized and encouraged states to enter into compacts for the efficient management of wastes. It is the policy of the party states to cooperate in the protection of the health, safety and welfare of their citizens and the environment and to provide for and encourage the economical management of low-level radioactive wastes. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety and welfare of the citizens and the environment of the region; to limit the number of facilities needed to effectively and efficiently manage low-level radioactive wastes and to encourage the reduction of the generation thereof; and to distribute the costs, benefits and obligations among the party states. It is the policy of the party states that activities conducted by the Commission are the formation of public policies and are therefore public business.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

- a. "Commission" means the Central Interstate Low-Level Radioactive Waste Commission;
- b. "disposal" means the isolation and final disposition of waste;
- c. "decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at the facility;
- d. "extended care" means the continued observation of a facility after closure for the purpose of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and includes undertaking any action or cleanup necessary to protect public health and environment;
- e. "facility" means any site, location, structure or property used or to be used for the management of waste;
- f. "generator" means any person who, in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, biomedical research, other industrial or commercial activity, other research or mining in a party state, produces or processes waste.

"Generator" does not include any person who receives waste generated outside the region for subsequent shipment to a regional facility;

g. "host state" means any party state in which a regional facility is situated or is being developed;

h. "institutional control" means those activities carried out by the host state to physically control access to the disposal site following transfer of the license to the owner of the disposal site. These activities include, but are not limited to, environmental monitoring, periodic surveillance, minor custodial care, and other necessary activities at the site as determined by the host state and administration of funds to cover the costs for these activities. The period of institutional control will be determined by the host state but may not be less than 100 years following transfer of the license to the owner of the disposal site;

i. "low-level radioactive waste" or "waste" means, as defined in the Low-Level Radioactive Waste Policy Act (Public Law 96-573), radioactive waste not classified as: High-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11 e.(2) of the Atomic Energy Act of 1954, as amended through 1978.

j. "management of waste" means the storage, treatment or disposal of waste;

k. "notification of each party state" means transmittal of written notice to the governor, presiding officer of each legislative body and any other persons designated by the party state's Commission member to receive such notice;

l. "party state" means any state which is a signatory party to this compact;

m. "person" means any individual, corporation, business enterprise or other legal entity, either public or private;

n. "region" means the area of the party states;

o. "regional facility" means a facility which is located within the region and which has been approved by the Commission for the benefit of the party states;

p. "site" means any property which is owned or leased by a generator and is contiguous to or divided only by a public or private way from the source of generation;

q. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands or any other territorial possession of the United States;

r. "storage" means the holding of waste for treatment or disposal; and



SECTION 6

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

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SECTION 7

VCPRP

REGULATIONS





SECTION 7

VCPRP REGULATIONS

28-70-3

KANSAS DEPT. OF HEALTH AND ENVIRONMENT

(c) Reports are not required for the following cancers:

(1) Squamous cell carcinoma of the skin, unless located on a lip of the face or in the genital area, or unless spread beyond local tissues at diagnosis;

(2) basal cell carcinoma of the skin, unless located on a lip of the face or in the genital areas, or unless spread beyond local tissues at diagnosis; and

(3) carcinoma in situ of the uterine cervix.

(d) Reports from health care institutions shall include the following information, if available:

(1) Patient demographics;

(2) diagnostic results and treatment;

(3) outcome, recurrence, and date of death, if applicable;

(4) cancer site, histology, and stage;

(5) confidential patient identifiers, including the following:

(A) Full name;

(B) alias;

(C) maiden name;

(D) name of spouse;

(E) medical record number;

(F) social security number;

(G) street address at the time of diagnosis;

(H) current street address; and

(I) current telephone number;

(6) confidential provider information, including names and address of health care institutions and individual providers of health care;

(7) history of abortion; and

(8) other variables identified as necessary by the registry director and approved by the secretary.

(e) Reports to the registry shall be in one of the following formats:

(1) American standard code for information interchange (ASCII) file in the North American association of central cancer registries (NAACCR) format;

(2) paper forms provided by the registry;

(3) a copy of the pathology laboratory report, if received from a pathology laboratory; or

(4) other formats identified as acceptable by the registry director.

(f) Any data transferred to the registry shall be secure and confidential.

(1) All paper data transferred to the registry shall be sealed in an envelope marked "CONFIDENTIAL" and addressed to the registry director.

(2) Electronic data transfer may be made by one of the following methods:

(A) Diskette mailed in a sealed envelope marked "CONFIDENTIAL" and addressed to the registry director; or

(B) electronic transmission, if encrypted, according to prior instructions from the registry director. (Authorized by and implementing L. 1997, Ch. 110, Sec. 2; effective Feb. 27, 1998.)

28-70-3. Use and access. (a) For purposes of ascertaining accuracy and completeness of cancer data, a person representing the registry may review the medical diagnosis of each person cared for by any individual provider or any health care institution, and may review the medical records of any person with cancer. Review shall be by prearrangement with the individual provider or health care institution.

(b) Any person who requests access to confidential registry data shall submit the request to a review panel, as established by L. 1997, ch. 110, Sec. 6, and amendments thereto. When the requestor demonstrates to the satisfaction of the review panel that the request complies with one or more of the conditions as defined in L. 1997, Ch. 110, Sec. 5, subsections (c) to (f), and amendments thereto, confidential data may be released by the panel. (Authorized by L. 1997, ch. 110, Sec. 2; implementing L. 1997, Ch. 110, Sec. 4 and Sec. 5; effective Feb. 27, 1998.)

Article 71.—VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

28-71-1. Definitions. For the purposes of these regulations, the following definitions shall apply. (a) "Adjacent property" means property that is impacted by contamination from an off-property source or property that is contiguous to a contaminated property.

(b) "Anthropogenic levels" means concentrations of chemicals or substances that are present in the environment due to human activity.

(c) "Class one contamination (Class I)" means that suspected or confirmed contamination is determined to exist on the eligible property, and the eligible property is not a source of contamination or is located adjacent to a property with a known source of contamination.

(d) "Class two contamination (Class II)" means that suspected or confirmed soil contamination is determined to exist on the eligible property, there



SECTION 7

VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

28-71-2

is no known or suspected soil contamination emanating off the eligible property, and there is no known or suspected ground-water contamination.

(e) "Class three contamination (Class III)" means that suspected or confirmed soil or ground-water contamination, or both, is determined to exist on the eligible property, and there is no known or suspected soil or groundwater contamination that has migrated off the eligible property.

(f) "Class four contamination (Class IV)" means that suspected or confirmed soil or ground-water contamination, or both, is suspected or is determined to exist on and off the eligible property.

(g) "Days" means calendar days unless otherwise specified. Documents due on the weekend or a holiday shall be submitted on the first working day after the weekend or holiday.

(h) "Enforcement action" means an administrative or judicial claim made by a governmental agency pursuant to state, federal, or common law against the property described in the application, which enforcement action is based upon the contaminants sought to be cleaned up under this program.

(i) "Environmental site assessment" means an investigation of a property, conducted by a qualified environmental professional, that identifies and defines recognized environmental conditions at the property.

(j) "Hazard index value" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both.

(k) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period to a reference dose for that substance derived from a similar exposure period.

(l) "Institutional control" means a legal mechanism that limits access to or use of property, or warns of a hazard, the purpose of which is to ensure the protection of human health and the environment.

(m) "Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water that is delivered to any user of a public water system as described in K.A.R. 28-15-13, subsections (b) and (c).

(n) "Naturally occurring levels" means ambient concentrations of chemicals or substances present in the environment that are typical of background levels near the eligible property when not affected by the identified contamination source.

(o) "Nonresidential property" means any property that does not exclusively meet the definition of residential property.

(p) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state agency, unit of local government, school district, federal agency, tribal entity, interstate body, or other legal entity.

(q) "Potable water" is as defined in K.A.R. 28-16-28b, paragraph (b)(32).

(r) "Qualified environmental professional" means an individual who demonstrates to the satisfaction of the department that the individual, through academic training, occupational experience, reputation, or other credentials, can objectively conduct one or more aspects of an environmental site assessment.

(s) "Remedial action" means those actions taken to address the effects of a release of a contaminant, so that it does not cause a significant risk to present or future public health or welfare, or to the environment.

(t) "Remediation" means the act of implementing, operating, and maintaining a remedial action.

(u) "Residential property" means any property currently used or proposed for use as one of the following:

(1) A residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or

(2) a public use area, including a school, educational center, day care center, playground, unrestricted outdoor recreational area, or park.

(v) "Voluntary cleanup and property redevelopment program (VCPRP)" means the implementation of the voluntary cleanup and property redevelopment act, as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, by the department.

(w) "Voluntary party" means an applicant whose property is determined to be eligible for the voluntary cleanup and property redevelopment program. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164 through 65-34,172; effective June 26, 1998.)

28-71-2. Applicant. An applicant shall include a person who has title, control, or access to the property and is one of the following:

(a) A person who owns property;



SECTION 7

28-71-3

KANSAS DEPT. OF HEALTH AND ENVIRONMENT

(b) a person who operates a facility located on the property;

(c) a person who previously owned, operated, or otherwise controlled activities on the property;

(d) a prospective owner of property;

(e) a prospective operator of a facility located on property;

(f) a person or generator of hazardous or solid waste who by contract, agreement, or otherwise, directly or indirectly, arranged for the disposal of contaminants at the property;

(g) a person who legally controls the property; or

(h) any unit of government that acquired title or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164; effective June 26, 1998.)

28-71-3. Eligibility determination. (a) The property described in the application shall contain an actual, threatened, or suspected release of a contaminant or be impacted or threatened by contaminants from an off-property source.

(b) Properties that may be eligible for application to the voluntary cleanup and property redevelopment program include the following:

(1) Properties that have been assessed by the United States environmental protection agency, its contractors and agents, and the department, if the property meets the additional criteria defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, and these regulations;

(2) contaminated properties that are currently under an existing department order or agreement, upon completion of the actions required by the department order or agreement, if the property meets the additional criteria as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, and the determination of completion of the actions required by the order or agreement shall be made by the department;

(3) portions of a larger property that have or require a resource conservation and recovery act (RCRA) permit, but these portions do not require a permit in accordance with RCRA, which contains a corrective action component, as determined by the department, if the property meets the additional criteria as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto;

(4) portions of a larger property that includes

oil and gas activities regulated by the state corporation commission, but the specific portion is not regulated by the state corporation commission, if the property meets the additional criteria defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto; and

(5) contaminated properties that are not statutorily excluded. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164; effective June 26, 1998.)

28-71-4. Application process. (a) Each applicant shall submit to the department a complete application consisting of the following:

(1) An application form, provided by the department;

(2) a nonrefundable application fee of \$200.00; and

(3) all documentation that supports the application, including environmental assessments, investigation reports, or both.

(b) Determination of whether or not the property defined in the application is eligible for participation in the program shall be made by the department, pursuant to K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto. The applicant shall be notified by the department in writing of the determination, not more than 60 days after the department receives a complete application or reapplication.

(c) In the event that the initial application is determined by the department to be incomplete, a written notice stating why the application is incomplete shall be returned to the applicant by the department. The applicant shall submit a revised application package to address the concerns of the department.

(d) In the event the department determines that the revised application package is still incomplete, written notice shall be provided by the department to the applicant, who shall submit a second application fee of \$200.00 and a revised application package. (Authorized by and implementing K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164 and 65-34,165; effective June 26, 1998.)

28-71-5. Classification determination.

(a) An initial classification of contamination for eligible properties shall be determined by the department.

(b) For the purposes of this regulation, properties shall be placed into one of four contamination classes, as defined in K.A.R. 28-71-1.



(c) The department's classification determination shall be conveyed to the voluntary party with written notification of eligibility.

(d) The contamination classification of an eligible property shall be determined by the department based on the following criteria:

(1) The application and associated documentation that supports the voluntary party's application;

(2) review of available technical bulletins and scientific documents describing the geology and geohydrology of the property and surrounding area; and

(3) scientific information relating to the toxicity, mobility, persistence, and other characteristics of the contaminants suspected or identified at a property.

(e) For the purposes of selecting an appropriate level of work necessary to achieve the objectives as defined in K.A.R. 28-71-9, determination of which contamination classification an eligible property falls into shall be made by the department.

(f) Throughout the time the eligible property is participating in the program, the contamination classification of an eligible property may be adjusted by the department to a lower contamination classification or a higher contamination classification, depending on additional information obtained. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165 and 65-34,166; effective June 26, 1998.)

28-71-6. Voluntary agreement. (a) Upon departmental approval of the application for the voluntary cleanup and property redevelopment program, the voluntary party shall enter into a voluntary agreement with the department. The voluntary agreement shall be developed by the department and submitted to the voluntary party for signature. The voluntary agreement shall set forth all of the terms and conditions for implementation of the work anticipated in the program.

(b) Oversight, management, and review activities pertaining to the property shall not be commenced by the department until the voluntary agreement is signed by both the department and the voluntary party.

(c) The voluntary agreement shall require the voluntary party to deposit with the department an initial amount, not to exceed \$5,000.

(d) The voluntary agreement shall require the voluntary party to provide the department access

to the property at all reasonable times, upon reasonable notice to the voluntary party during all the activities conducted under K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165; effective June 26, 1998.)

28-71-7. Initial deposit and reimbursement. (a) The initial deposit made by the voluntary party, based on the contamination classification of the property, shall be one of the following amounts.

(1) Class I contamination shall not exceed \$1,000, based upon actual billing by the department.

(2) Class II contamination shall be \$3,000.

(3) Class III contamination shall be \$4,000.

(4) Class IV contamination shall be \$5,000.

(b) Oversight shall be performed by the department or its consultants or contractors. This oversight shall include the following:

(1) The review of documents, studies, and test results;

(2) any necessary administrative decision making by the department;

(3) collection of split samples, laboratory analysis, and sampling supplies;

(4) travel;

(5) per diem;

(6) verification activities; and

(7) associated indirect costs.

(c) The purpose of oversight of a voluntary party's performance by the department shall be to assure that the work is consistent with, and meets the requirements of, K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto; applicable guidance, policies and procedures; and these regulations. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165; effective June 26, 1998.)

28-71-8. Environmental assessments. (a) Environmental assessments as defined in these regulations and prepared by a qualified environmental professional shall be accepted by the department.

(b) An environmental assessment shall include the following information:

(1) The legal description of the site and a map identifying the location, boundaries, and size of the property;

(2) the physical characteristics of the site and areas contiguous to the site, including the location



SECTION 7

28-71-9

KANSAS DEPT. OF HEALTH AND ENVIRONMENT

of any surface water bodies and groundwater aquifers;

(3) the location of any water wells located on the property or in an area within a one-half mile radius of the property and a description of the use of the those wells;

(4) the operational history of the property, based upon the best efforts of the applicant and the current use of areas in the vicinity of the property;

(5) the present and proposed uses of the property;

(6) information concerning the nature and extent of any contamination;

(7) information on releases of contaminants that have occurred at the site, including any environmental impact on areas in the vicinity of the property;

(8) any sampling results or other data that characterizes the soil, groundwater, or surface water on the property; and

(9) a description of the human and environmental exposures to contamination at the property, based upon the property's current use and any future use proposed by the property owner as approved by the local zoning authority. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165, 65-34,166, and 65-34,170; effective June 26, 1998.)

28-71-9. Voluntary cleanup work plans and reports. (a) Upon signature of the voluntary agreement by the voluntary party and the department, each environmental investigation report, assessment report, or both, submitted by the voluntary party shall be reviewed by the department. Determination of whether or not the investigation, assessment, or both, meet all the following objectives shall be made by the department.

(1) Sources for contaminants have been adequately identified and investigated.

(2) The vertical and horizontal extent of contaminants has been determined.

(3) Human health and environmental receptors have been identified.

(4) Potential risks and impacts to receptors have been evaluated.

(5) Quality assurance and quality control have been maintained.

(b) Based on the reports submitted by the voluntary party, a determination as to any required actions shall be made by the department.

(c) Determination that further investigation is

necessary to meet the objectives as defined in K.A.R. 28-71-9, subsection (a) may be made by the department. If this determination is made, the voluntary party shall submit to the department for review and approval a work plan for investigation. The work plan shall be based on a scope of work provided by the department. The work plan shall be reviewed by the department, and written comments for revisions or approval shall be provided by the department. After approval of the work plan by the department, the following actions shall occur.

(1) The voluntary party shall implement the department-approved work plan for investigation.

(2) The voluntary party shall document and submit the results of the investigation in a report, and the report shall be submitted to the department for review.

(3) The report shall be reviewed by the department, and written comments for revision or approval shall be provided by the department.

(4) A determination as to any further required actions based on the results of the approved investigation report shall be made by the department.

(d) If it is determined that remediation is necessary to address, mitigate, or both, the risks posed by the property, the voluntary party shall submit to the department for review and approval a proposal for remediation. The proposal for remediation shall be based on a scope of work provided by the department. The proposal for remediation shall meet the following objectives:

(1) Be protective of human health and the environment for documented present and future land uses;

(2) meet applicable state standards and guidelines or the results of a risk analysis approved by the department;

(3) evaluate remedial alternatives that are proven reliable and are economically and technically feasible by completing the following activities:

(A) Comparing a minimum of two alternatives, not including the "no action" alternative;

(B) documenting the ability of each remedial alternative to attain a degree of cleanup and control of contaminants established by the department; and

(4) provide a description and evaluation of the voluntary party's proposed remedial alternative.

(e) The proposal for remediation shall be reviewed by the department, and written comments



for either revision or approval shall be provided by the department within 45 days of submittal, unless the department extends the time for review to a date certain.

(f) If the department approves the proposal for remediation, then a cleanup plan shall be submitted by the applicant. The cleanup plan shall include the following:

(1) A description of all tasks necessary to implement the preferred remedial alternative;

(2) preliminary or final design plans and specifications of the preferred remedial alternative;

(3) a description of all necessary easements and permits required for implementation of the cleanup;

(4) an implementation schedule;

(5) a plan to monitor the effectiveness of the cleanup during implementation; and

(6) a verification plan to document that cleanup objectives have been achieved.

(g) The cleanup plan shall be reviewed by the department, and written comments for either revision or acceptance shall be provided by the department within 30 days of submittal, unless the department extends the time for review to a date certain. If the department accepts the cleanup plan, a notice of the department's determination shall be published by the department, in accordance with K.A.R. 28-71-12.

(h) The cleanup plan shall be approved by the department if the plan is publicly accepted and if the plan attains a degree of cleanup and control of contaminants that are protective of human health and the environment.

(i) If the cleanup plan is not approved by the department, the voluntary party shall be provided with the reasons for denial, in writing, by the department.

(j) Upon receipt of written assurance that the cleanup plan has been completed, a verification sampling program, approved by the department, shall be conducted by the department and the voluntary party, to confirm that the property has been addressed as described in the cleanup plan. Conducting verification activities, allowing the voluntary party to conduct these activities, or requesting that both the department and voluntary party collectively conduct these activities may be selected by the department. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,166, 65-34,167, and 65-34,168; effective June 26, 1998.)

28-71-10. "No further action" determinations. (a) For the purposes of this regulation, the term "no further action" determination means that the department has determined, pursuant to K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, that no further action is necessary at the property.

(b) The "no further action" determination by the department shall be made on properties where either of the following applies.

(1) Contamination was detected during the environmental assessment, department-approved investigation, or both, but contamination levels present no significant risk to human health and the environment, and those levels are less than applicable federal or state standards.

(2) The property has been remediated, as approved by the department, in a cleanup plan and confirmed with verification sampling as defined in K.A.R. 28-71-9.

(c) "No further action" determinations shall contain the appropriate disclaimers and limitations for the specific circumstances at the property.

(d) A "no further action" determination may be issued by the department with the following conditional terms:

(1) To allow for long-term monitoring of contamination; or

(2) to provide for further action in the event that department-approved cleanup levels are exceeded at property boundaries; or

(3) both paragraphs (d)(1) and (d)(2).

(e) A "no further action" determination may be issued by the department to properties when no contamination is indicated, based on a department-approved application, environmental assessment, or investigation reports submitted by the voluntary party. The environmental assessment or investigation shall document that the past and current use of the property has not contributed to contamination of soils, surface water or groundwater.

(f) A "no further action" determination may be issued by the department to contaminated, adjacent properties if the property that is the source of the contamination has applied and been accepted into the voluntary cleanup and property redevelopment program or if the property is being addressed by the department or the United States environmental protection agency through another program. The following requirements shall be



SECTION 7

28-71-11

KANSAS DEPT. OF HEALTH AND ENVIRONMENT

met for those properties qualifying for a “no further action” determination under this subsection.

(1) The owner or operator, or both, of the adjacent property shall submit a complete application to the department, including environmental assessments and investigations.

(2) Determination that the contamination on the subject property resulted from an off-property source shall be made by the department.

(3) The department determines that there is no on-site source of contamination, including soil contamination.

(4) The department determines that the likely source of contamination exists nearby and its location may allow contamination to migrate onto the subject property.

(5) The owner or operator, or both, of the adjacent property documents that the past and current use of the property would not have contributed to the contamination of soils, surface water or groundwater.

(6) The owner or operator, or both, of the adjacent property agrees to fully cooperate and allow reasonable access for the investigation and cleanup of the contamination for the source property. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,169; effective June 26, 1998.)

28-71-11. Remedial standards and remedial actions. (a) All remedial alternatives performed by the voluntary party and approved by the department shall attain a degree of cleanup, control, or both, of contaminants that ensures protection of human health and the environment.

(b) All cost-effective remedial actions to restore the environment to conditions before its altered state, including innovative technologies and natural processes, shall be considered by the department if the protection of human health and the environment is maintained, the future degradation of the natural source is minimized, and the movement of contaminants is controlled.

(c) Responsibility for reviewing and approving the approach and final selection of cleanup levels shall rest with the department. The voluntary party may select any one of the following three approaches to determine cleanup levels for the property:

(1) Department-approved methods to determine background levels;

(2) department-established risk-based levels; or

(3) a site-specific, risk-based analysis conducted by the voluntary party or the department, based on department-approved formulas, exposure parameters, and department-approved land use scenarios.

(d) The selection of cleanup levels shall be based on the present and proposed future uses of the property and surrounding properties. Land use shall include two general categories: residential and nonresidential.

(e) Multiple media, exposure pathways, and contaminants shall be taken into account during the determination of cleanup levels.

(f) Existing and applicable federal or state standards shall be considered by the department during the determination of cleanup levels.

(g) Institutional controls that restrict the use of a property may be required by the department to ensure continued protection of human health and the environment.

(1) Institutional controls for the property shall not be proposed as a substitute for evaluating remedial actions that would otherwise be technically and economically practicable.

(2) Institutional controls for the property that are approved by the department shall be considered as remedial actions.

(3) Institutional controls for the property shall be described in a restrictive covenant approved by the department, executed by the property owner, and recorded with the register of deeds for the county in which the property is located. These restrictive covenants shall remain in effective and be binding on the owner's successors and assignees until approved otherwise by the department in writing.

(h) Soil cleanup levels and the depths to which the cleanup levels shall apply shall be based on human exposure, the present and proposed uses of the property, the depth of the contamination, and the potential impact to groundwater, surface water, or both, and any other risks posed by the soil contamination to human health and environment. One of the following approaches to soil cleanup shall be selected by the voluntary party and approved by the department.

(1) In the event that naturally occurring levels of an individual contaminant in the soil exceed the cancer risk level of 1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.

(2) In the event that anthropogenic levels of a contaminant in soil exceed the cancer risk level of



SECTION 7

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

28-71-11

1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then a 1×10^{-5} , one in 100,000 cancer risk level, or a level corresponding to a hazard index value equal to 1.0 may be used as the cleanup levels.

(3) A property-specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical-specific cleanup level of less than the cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value equal to 1.0.

(i) Property-specific cleanup levels shall be determined by the department for contaminants for which there is insufficient toxicological evidence to support a regulatory standard for risk-based cleanup levels or for nontoxic contaminants for which cleanup is required as a result of other undesirable characteristics of those contaminants. These levels shall be based on the following:

(1) The ability of the impacted soil to support vegetation representative of unimpacted properties in the vicinity of the eligible property; and

(2) the potential of the contaminant to impact and degrade groundwater, surface water, or both, through infiltration or runoff.

(j) When there are multiple contaminants in the soil, the cleanup level of each contaminant shall not allow the cumulative risks posed by the contaminants to exceed a cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value of 1.0.

(k) The department shall approve soil cleanup levels to insure that migration of contaminants in the soil shall not cause the cleanup levels established for groundwater, surface water, or both, to be exceeded.

(l) Groundwater cleanup levels shall be based on the most beneficial use of the groundwater considering present and proposed future uses. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the voluntary party and approved by the department. The most beneficial use of the groundwater shall be determined by the department based on available existing documentation, as well as documentation provided by the voluntary party.

(m) Groundwater potentially or actually used as a potable water source shall require maximum protection in determining cleanup levels.

(n) The department shall approve cleanup levels that prevent additional degradation of the groundwater caused by contaminant migration and that encourage remedial actions to restore

contaminated groundwater to the groundwater's most beneficial use.

(o) One or a combination of the following approaches to groundwater cleanup shall be selected by the voluntary party and approved by the department.

(1) In the event that natural occurring levels of an individual contaminant in groundwater exceed the cancer risk level of 1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.

(2) In the event that anthropogenic levels of an individual contaminant in groundwater exceed the cancer risk level of 1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then the maximum contaminant levels (MCLs) established by the federal government or a cancer risk level of 1×10^{-5} , one in 100,000, or a level corresponding to a hazard index value equal to 1.0 shall be the cleanup level.

(3) In the event that the chemical-specific maximum contaminant levels (MCLs) are not applicable, a property-specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical-specific cleanup level of less than the cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value equal to 1.0.

(p) When the need for cleanup of a contaminant may be predicated on characteristics of that contaminant other than toxicity, including the contribution of an undesirable taste or odor, or both, the site-specific cleanup level as determined by the department or secondary MCLs shall be used as cleanup levels for contaminants for which insufficient toxicological evidence has been gathered to support a regulatory standard for risk-based cleanup levels or nontoxic contaminants. These levels shall be based on the aesthetic quality and usability of the groundwater, surface water, or both, for the present and proposed future use.

(q) When there are multiple contaminants in the groundwater, the cleanup level of each contaminant shall be such that the cumulative risks posed by the contaminants shall not exceed a cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value of 1.0.

(r) Surface water cleanup levels shall meet the Kansas surface water quality standards, as defined in K.A.R. 28-16-28b, et seq. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,167 and 65-34,168; effective June 26, 1998.)



SECTION 7

28-71-12

KANSAS DEPT. OF HEALTH AND ENVIRONMENT

28-71-12. Public notification and participation. (a) When a cleanup plan has been accepted by the department, and after consultation with the applicant, a notice of the department's acceptance shall be published by the department in a local newspaper of general circulation in the area affected. Notice shall be provided by one or more of the following methods:

- (1) Display advertisement;
- (2) legal notice; or
- (3) published notice with direct notice to any other appropriate entities, including appropriate units of local government.

(b) The cleanup plan shall be made available by the department to the public upon request.

(c) All public notices shall indicate the public comment period for the cleanup plan. The comment period shall extend no fewer than 15 days from the date of posting the notice.

(d) The public shall have the opportunity during the public comment period to submit to the department written comments regarding the cleanup plan. Written response shall be made by the department to those written comments from the public that directly concern the cleanup plan.

(e) Following the 15-day public comment period, a public information meeting may be held by the department if, in the department's judgment, the public comments on the voluntary cleanup plan submitted warrant a meeting or the voluntary party requests a meeting.

(f) The public information meeting shall provide the public with information about relevant activities at the property associated with the voluntary cleanup and property redevelopment program. Public information meetings shall be attended by a member of the department and the voluntary party or designated representative, or both.

(g) A notice to the city, the county, or both, of the public information meeting shall be provided by the department.

(h) Upon completion of the public notification and participation process, a determination to approve or disapprove the cleanup plan shall be made by the department. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,168; effective June 26, 1998.)

**Article 72.—RESIDENTIAL CHILDHOOD
LEAD POISONING PREVENTION
PROGRAM**

28-72-1. Definitions. In addition to the definitions contained in K.S.A. 65-1,201, and

amendments thereto, the following definitions shall apply to the residential childhood lead poisoning prevention act.

(a) "Accreditation" means approval by KDHE of a training provider for a training course to train individuals for lead-based paint activities.

(b) "Accredited course" means a course that has been approved by the department for the training of lead professionals.

(c) "Act" means the residential childhood lead poisoning prevention act, and amendments thereto.

(d) "Adequate quality control" means a plan or design that ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control shall also include provisions for representative sampling.

(e) "Audit" means the monitoring by KDHE of a training provider for a training course to ensure compliance with the act and this article.

(f) "Certified elevated blood lead (EBL) level inspector" and "EBL inspector" mean a person who meets the requirements of K.A.R. 28-72-6 and who is certified by the secretary.

(g) "Certified lead abatement supervisor" and "lead abatement supervisor" mean an individual who is trained by an accredited training program, as defined in this act, and certified by the secretary under K.A.R. 28-72-8 to supervise workers, to conduct lead abatement activities, and to prepare occupant protection plans and abatement reports.

(h) "Certified lead abatement worker" and "lead abatement worker" mean a person who meets the requirements of K.A.R. 28-72-7 and who is certified by the secretary.

(i) "Certified lead inspector" and "lead inspector" mean a person who meets the requirements of K.A.R. 28-72-5 and who is certified by the secretary. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(j) "Certified lead professional" means a person who is certified by the secretary as a lead inspector, elevated blood lead (EBL) level inspector, lead abatement supervisor, lead abatement worker, project designer, or risk assessor.

(k) "Certified project designer" and "project designer" mean a person who meets the requirements of K.A.R. 28-72-9 and who has been certified by the secretary.

(l) "Certified risk assessor" and "risk assessor"

SECTION 8

SAMPLE

OF

VOLUNTARY

AGREEMENT





SAMPLE OF VOLUNTARY AGREEMENT

STATE OF KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT VOLUNTARY AGREEMENT

APPLICANT NAME
PROPERTY LOCATION

I. This Voluntary Agreement is entered into by **Applicant Name** (“Applicant”) and the Kansas Department of Health and Environment (“Department”) pursuant to The Voluntary Cleanup and Property Redevelopment Act; Kansas Statutes Annotated Chapter 65-34,161, et seq. The terms of this Voluntary Agreement are not negotiable.

II. In entering into this Voluntary Agreement, the mutual objectives of the Department and the Applicant are to insure that the public health, welfare and the environment at or near the Property are protected from any release or threat of release of contaminants. The Applicant explicitly denies any and all legal liability pertaining to the Property or derived there from under any federal or state statute, regulation(s) or ordinance(s) or common law.

III. The Department and Applicant mutually **AGREE** to the following:

A. The Applicant shall conduct a Voluntary Cleanup Investigation (“VCI”), that meets the objectives of the Department’s Scope of Work. The Department may determine that information from existing investigations may satisfy such objectives, therefore, further investigation may not be required by the Department.

B. If the Department determines that further investigation is necessary the Applicant shall:

1. submit a draft VCI Work Plan including an implementation schedule for the review of the Department within ninety (90) days from the date of this Voluntary Agreement. The Department will review the work plan and either provide written comments for revision or written approval.
2. upon approval of the Department, implement the approved VCI Work Plan.
3. document the results of the investigation in a VCI Report. The report shall be submitted to the Department for review. The Department will review the report and either provide written comments for revision or written approval.



C. The Applicant shall provide Property access to the Department, its employees and contractors throughout the period of this Agreement for the purposes of oversight, including split sampling, and verification.

D. The Department shall make a determination as to any further required actions based on the results of the VCI Report. If no further action is determined by the Department, the Department will issue a “No Further Action Determination”.

E. If remediation or monitoring is determined necessary by the Department, the Applicant shall be requested by the Department to:

1. submit to the Department for review and approval a Voluntary Cleanup Remediation Proposal (“VCRP”) including an implementation schedule for review by the Department within ninety (90) days from the determination and notification to the Applicant that remediation and/or monitoring is necessary. The VCRP shall be developed by the Applicant based on a Scope of Work provided by the Department.

2. if the Department approves the VCRP, a Voluntary Cleanup Plan shall be submitted by the Applicant. The Voluntary Cleanup Plan will conform to the Department’s Scope of Work.

F. If the Department accepts the Voluntary Cleanup Plan, the Department shall publish a notice of the Department’s determination.

G. The Department will review the Voluntary Cleanup Plan and public comments, if any, to determine written revisions or written approval of the plan.

H. Following the public comment period and approval of the Voluntary Cleanup Plan, the Applicant will implement the plan within six (6) months and complete the plan within twenty-four (24) months, not including long term operation, maintenance, and monitoring of the system beyond the twenty-four (24) months if required.

I. Upon receipt of written assurance that the Voluntary Cleanup Plan has been completed by the Applicant, the Department and Applicant will conduct verification monitoring to confirm that the Property has been addressed as described in the Voluntary Cleanup Plan.

J. Applicant shall notify the Department at least seven (7) days before conducting any well drilling, installation of equipment, or sampling. At the request of either party, the party collecting samples shall provide or allow the other party or its authorized representatives to take split samples of all samples collected pursuant to this Voluntary Agreement.



IV. The Department may request the Applicant to perform additional tasks not mentioned in, but consistent with the scope and intent of this Voluntary Agreement to protect public health and the environment.

V. By entering into this Voluntary Agreement, Applicant does not admit any liability with respect to the Property, and nothing in this Voluntary Agreement shall be construed as an admission as to any issue of law or fact related to the Property.

VI. The Applicant shall, pursuant to the provisions of the Act, reimburse the Department for response and oversight costs. In the event that such costs are not paid by the Applicant, the Department will not continue work under this Agreement until reimbursement has occurred.

VII. The Department agrees that the activities being undertaken by the Applicant for this Property constitute the only response actions which the Department is undertaking or is causing to be undertaken for the Property. However this shall not preclude the Department from undertaking or causing to be undertaken any response actions that may be necessary to study conditions at or near the Property which present actual or potential threats to the public health or welfare or the environment.

VIII. Neither the State of Kansas, the Department, the Applicant, nor any agent thereof shall be liable for any injuries or damage to persons or property from acts or omissions of the others, their employees, contractors, agents, receivers, trustees, successors or assigns in carrying out activities required of the parties to this Voluntary Agreement. Neither the State of Kansas, nor any agency thereof shall be considered a party to any contract entered into by the Applicant in carrying out activities pursuant to this Voluntary Agreement.

IX. This Voluntary Agreement shall be effective as of the date signed by the Secretary of the Kansas Department of Health and Environment.

X. The provisions of this Voluntary Agreement shall be deemed satisfied thirty (30) days after completion of the requirements of Article III and the payment or refund of response and oversight costs incurred by the Department in accordance with Article VI. The Department shall use its best efforts to issue to the Applicant a certification that the responsibilities under this Voluntary Agreement have been completed and successfully discharged within thirty (30) days. Such certification shall be in the form of a "No Further Action Determination".

XI. The Applicant may terminate this Agreement prior to its completion provided that, from a human health and environmental perspective, the Property is in no worse condition at the time of termination than when the Applicant initiated activities under this Agreement.

XII. The terms and provisions of this Agreement shall be construed pursuant to the laws of the State of Kansas.



KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

IN WITNESS WHEREOF, the Department and the Applicant have executed this Voluntary Agreement through their duly authorized representatives on the respective dates written hereunder.

By: (signature)

**Secretary
Kansas Department of Health
and Environment**

Printed Name

Title

Date

Organization

Date



SECTION 8

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

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SECTION 9

VCPRP

SCOPES

OF

WORK

FOR

INVESTIGATION





VCPRP SCOPES OF WORK FOR INVESTIGATION

Introduction

KDHE determines the class of contamination at a property based on information contained in the VCPRP Application to Participate and in supporting documents (for details, see Section 1.4).

Designation of Class I Contamination at a property generally means that KDHE has preliminarily determined that suspected or confirmed contamination exists at the property and the property does not appear to be a source for the contamination. In some cases, a property with Class I Contamination may be located adjacent to a property with a known source for the contamination. Alternately, a property may have confirmed contamination for which the source location is unknown and the nature of the contamination may not be consistent with the known or assumed current and historical use of the property.

Class II Contamination at a property is generally defined as suspected or confirmed soil contamination on the property and there is no known or suspected ground water contamination. Class III Contamination at a property is generally defined as suspected or confirmed soil and ground water contamination on the property and the contamination is contained within the boundaries of the property. Class IV contamination at a property is generally defined as suspected or confirmed soil and ground water contamination on the property and beyond the property boundaries (i.e., off-site migration).

Voluntary Cleanup Investigation Work Plan

If KDHE determines that existing environmental investigations do not adequately characterize contamination at a property, a Voluntary Cleanup Investigation (VCI) may be required. Performance of a VCI will involve three processes: 1) development of a VCI Work Plan; 2) implementation of the KDHE-approved VCI Work Plan; and 3) reporting the investigative results in a VCI Report. A VCI Work Plan describing the proposed investigative activities at a property must be prepared and submitted to KDHE for approval prior to beginning the investigation. The VCI Work Plan must include a detailed schedule of activities which specifically identifies the dates and time frames for performing and completing the VCI. Refer to the recommended VCI Work Plan and VCI Report content and format guidance provided in this section following discussion of the VCI Scopes of Work.

Suggested Scopes of Work for a VCI are given below for each class of contamination. If KDHE determines that a VCI will be required at a property, an appropriate choice from these Scopes of Work may be used to tailor a VCI Work Plan suitable to adequately characterize contamination at the property.



Class I Contamination

Considering the primary objective of obtaining KDHE's determination for "No Further Action" at a property, actions to address Class I Contamination properties may vary considerably. Required actions may range from the Voluntary Party conducting investigative activities, as necessary, to verify that the property falls into the Class I Contamination category, to KDHE simply reviewing existing file information on an adjacent property with a known source. The general objectives for a property with Class I contamination include:

- 1) Identify the contaminants suspected or confirmed at the property and the media impacted;
- 2) Determine the potential for the subject property to be a source for the contaminants identified. This could include identification of known sources on adjacent properties, documentation of historical activities conducted at the subject property, documentation of chemical products and compounds used, handled, stored, etc., at the subject property; and
- 3) Conduct investigations as necessary to verify whether a source for contamination is present on the property. As previously stated, an investigation may or may not be necessary; the necessity for a Voluntary Cleanup Investigation will be determined on a case by case basis.

Because of the potential variability in the nature of work that may be required for Class I Contamination properties, KDHE can not provide a standardized task-specific scope of work. The important fact to note is an investigation may be required to verify that a property is indeed appropriately determined to be a Class I Contamination property. If an investigation is required, the scope and tasks for the investigation will be determined jointly by the Voluntary Party and KDHE, and the final scope for the investigation will be very specific to determining whether a Class I Contamination designation is appropriate for the property. A work plan, investigative report, quality assurance/quality control requirements, verification sampling, and notification requirements as required for Voluntary Cleanup Investigations will also be necessary for any investigations conducted to verify that the Class I Contamination designation is appropriate.

No Further Action Determinations for Class I Contamination Properties

In accordance with K.S.A. 65-34, 169 (b)(1), KDHE may consider issuing a "No Further Action" determination for a property that is impacted by contamination, but has been confirmed not to be the source for the contamination, provided that the necessary action to protect public health and environment is or will be taken by a financially capable person or entity, even if not responsible for the contamination. This means KDHE can only issue "No Further Action" determinations for verified Class I Contamination properties when the source for the contamination is being addressed under an agreement or order executed between KDHE (or EPA) and a person or entity taking action to address the source.



In summary, KDHE's listing of general requirements for a Class I Contamination property to obtain a "No Further Action" determination includes:

- 1) The owner or operator, or both, of the subject property shall submit a completed application to KDHE, including environmental assessments and investigative reports;
- 2) A determination that the contamination on the subject property resulted from an off-site property source shall be made by KDHE;
- 3) KDHE determines that there is no source of contamination on the subject property, including soil contamination;
- 4) KDHE determines that the likely source of contamination exists nearby and its location may allow contamination to migrate onto the subject property;
- 5) The owner or operator, or both, of the subject property documents that the past and current use of the property could not have contributed to the contamination of soil, surface water, or ground water; and
- 6) The owner or operator, or both, of the subject property agrees to fully cooperate and allow reasonable access for the investigation and cleanup of the contamination from the source property.

When all of these requirements are met, KDHE can issue a "No Further Action" determination to the Class I Contamination property. If an off-site source property is found to be causing the contamination at the subject property and the source property is not being addressed under an agreement or order, the "No Further Action" determination can not be issued at that time; however, it could be issued in the future should an agreement or order be executed to address the source property.

Class II, Class III, and Class IV Contamination

If KDHE determines that previous environmental investigations at a property with Class II, Class III, or Class IV Contamination have not fully characterized the contamination, a Voluntary Cleanup Investigation (VCI) will be required to be performed at the property. The Scope of Work expected for the VCI Work Plan and VCI Report will be of increasing complexity and completeness for higher classes of contamination. KDHE's approval of the VCI Report will be based on the Voluntary Party's report satisfying the following objectives.

- 1) Source areas must be adequately characterized; i.e. type and nature of source(s) of contaminants, cause of release, estimated quantity of release(s), and whether the release(s) is/are active or inactive.



- 2) The vertical and horizontal extent of contamination on or from the property must be characterized (including migration mechanisms).
- 3) Adequately characterize the chemical and physical properties of the contaminants, their mobility and persistence in the environment, and their important fate and transport mechanisms.
- 4) Identify any human or environmental targets that may be affected by the contamination.
- 5) Evaluate potential risk of contamination to human health and the environment.

VCI Tasks for Class II, Class III, and Class IV Contamination

This scope of work provides the specific guidance for completing a Voluntary Cleanup Investigation for each class of contamination by giving requirements for all classes or each class of contamination separately. If Voluntary Parties or their consultants have any questions about the appropriate Scope of Work for a property, they should contact KDHE for clarification before preparing the VCI Work Plan.

Task 1: Source Area(s) Characterization

All Classes: Define the vertical and horizontal extent and degree of contamination for all source areas. This task may include characterization to identify all source areas and/or eliminate suspected source areas.

Task 2: Extent of Contamination in Soil and/or Ground Water

All Classes: Define the vertical and horizontal extent of contamination in soil emanating from each source area identified. Determine background concentrations for targeted contaminants.

Class III, IV: Define the vertical and horizontal extent of contamination in ground water emanating from each source area identified. If free-phase product is present at the property, the horizontal and vertical extent of the product must also be determined. Determine background concentrations for targeted contaminants.

Class IV: If contamination extends beyond property boundaries, the vertical and horizontal extent of impact must be delineated. The other properties impacted must also be identified as to their use and ownership.

Task 3: Vadose Zone Physical Characteristics

All Classes: Define physical characteristics of the vadose zone. Note that this information may be necessary in evaluating contaminant fate and transport in soil and appropriate remedial technologies to address the contamination.



Task 4: Aquifer Characteristics

Class II: Not applicable.

Class III, IV: Determine the basic physical characteristics of the aquifer to ascertain contaminant fate and transport mechanisms, migration potential, and evaluate plausible remediation technologies and approaches.

Class IV: Conduct a site-specific hydrogeologic assessment to determine the physical properties of the aquifer including ground water flow direction, velocity, horizontal and vertical gradients and hydraulic conductivities, boundary conditions, storage characteristics, etc. This hydrogeologic information will be used to ascertain contaminant fate and transport mechanisms, migration potential, and evaluate plausible remediation technologies and approaches.

Task 5: Human or Environmental Targets/Risk

All Classes: Identify any human and/or environmental targets (receptors) that are or may be affected by the contamination. In conjunction with identification of receptors, evaluate the potential risk to human health and the environment posed by the contamination. The identification of receptors and evaluation of risk should consider all exposure pathways and exposure routes that are applicable. Provide specific information documenting the receptors identified such as locations of receptors, names and addresses, mechanism of potential exposure, etc.

Class IV: Inventory public and/or private water supply wells within one mile downgradient of the property, locate human populations (names and addresses), identify surface water bodies, and delineate any sensitive ecosystems, such as habitat for endangered species, that may have been or may be impacted by contamination from the property.

Task 6: Land Use Determination

All Classes: Determine the current and future land use on and surrounding the property. This information will be used to determine appropriate cleanup levels and remedial approaches.

Implementation of the VCI

The Voluntary Party can implement the VCI upon notification from KDHE that the VCI Work Plan has been approved. The KDHE Project Manager must be notified at least seven (7) days in advance of field work to provide KDHE an opportunity to be present to conduct general oversight and to collect split samples.



KDHE's initial contamination classification for a property is based on the best information available at the time. If additional information obtained while conducting the VCI indicates that the soil and/or ground water contamination at the property has migrated off-site, or that ground water contamination is not present and would not be expected to occur, **notify the KDHE Project Manager immediately!** KDHE will review the additional information with the Voluntary Party and determine if the contamination classification for the property should be adjusted at that time; adjustments in contamination classification can be made by the KDHE Project Manager only. If a contamination classification is adjusted to a lower classification, for example, Class II adjusted to Class I, less investigative work may be required. If the contamination classification is increased, for example, Class II to Class III, obtaining KDHE's adjustment of contamination classification while the investigation is on-going may eliminate duplicative reporting, allow the investigation to continue saving time and potentially costs, and generally expedite the VCI process.

VCI Report

The Voluntary Party must submit a VCI Report to KDHE for review, comment, and approval, to document the results of the investigation and provide other information about the site needed to make appropriate decisions regarding closure, monitoring or cleanup at the property. The VCI Report must be submitted to KDHE in accordance with the schedule included in the VCI Work Plan. Refer to the following discussion titled, "VCI Report Format," for the recommended VCI Report content and format.

VCI Miscellaneous Information

Phased Investigations. The VCPRP allows for phasing of VCIs in specific cases. Phasing investigations, especially for properties with little existing investigative information, can provide for a more efficient and cost effective approach. For example, a property in a setting with shallow groundwater and unconsolidated sediments would appear amenable to direct-push sampling for both soil and groundwater. Using field analytical methods, it may be possible to satisfy most investigative objectives in an initial mobilization, gathering the data necessary to establish an efficient monitoring well network in the event groundwater contamination is confirmed. There are many other scenarios where phasing an investigation makes sense and would likely be allowed. It would be appropriate to discuss potential options with the VCPRP project manager under this scenario.

If the VCI is proposed to be conducted in phases, KDHE will request that a comprehensive strategy be presented in the initial VCI work plan, outlining the scope of the initial phase in detail and identifying the objectives of the first phase and how results obtained will be used in subsequent phases, demonstrating the step-wise process toward satisfying VCI objectives. Details for subsequent phases may be more general in the initial proposal. Rather than preparing a comprehensive VCI report following each phase, a data submittal with proposals for work to be conducted in the subsequent phase will suffice. Additional work plans can be abbreviated and reference the initial work plan for procedural information, as appropriate. Keep in mind the intent of the VCPRP is to provide for a more expedient investigation process; **an unnecessary numbers of phases leading to prolonged investigation will not be allowed.**



SECTION 9

Delineation of the Extent of Contamination. The Risk-based Standards for Kansas (RSK) Manual was developed through the VCPRP and ultimately adopted as, and modified to be, a Bureau-wide guidance for establishing site-specific human health risk based cleanup objectives. The experience of the VCPRP thus far is that RSK Tier 2 values listed in Appendix A are often confused with delineation objectives as opposed to cleanup objectives. In general, KDHE requires that the extent of contamination (in any media) be delineated to the lowest laboratory analytical detection limits possible so that it can be clearly demonstrated where the contamination is and isn't. The statement that contamination must be delineated to where it cannot be detected is a targeted objective, that is, an ideal goal that is not always achievable. As such, this does not mean in every case that numerous additional sampling locations are necessary to achieve this objective nor does it mean that for every project overseen by KDHE every contaminant plume is completely surrounded by non-detect sampling locations. KDHE's experience is that through standard investigative procedures, the extent of contamination is usually defined to a degree consistent with the targeted objective; in practice there may be little difference between the RSK level and non-detect. There are cases where additional sampling locations are considered necessary to satisfy the delineation objective. Professional judgement is applied by KDHE in deciding whether to require additional sampling for these circumstances, and includes considerations such as the ability to extrapolate a "zero edge" based on some control locations with no detectable contaminants, the existence of well defined concentration gradients, physical restrictions to or level of effort for installation of sampling points, potential receptors and exposure pathways in the immediate vicinity, etc. The bottom line is that, while an investigation should target complete delineation, it is not always possible. In those cases, KDHE can demonstrate flexibility when warranted and appropriately acceptable, based on site-specific circumstances. Note that such flexibility would only be provided in cases where reasonable attempts to achieve the targeted objective have been made.

KDHE requires complete delineation as opposed to delineating to RSK levels for the following reasons:

- RSK Tier 2 values listed in Appendix A are compound-specific and do not factor in the cumulative risk for multiple contaminants, if present. It is possible that an unacceptable risk occurs when there are multiple compounds present, with each compound being below its RSK level.
- The RSK guidance, as of the date of this publication, does not factor in potential exposures via indoor air (future RSK versions will include guidance for indoor air/vapor intrusion considerations). Contaminants in soil or ground water can present unacceptable risk via indoor air pathways even at concentrations less than RSK values.
- RSK values are subject to change.
- The public has an expectation that KDHE will confirm the location of and distribution of contamination when identified. KDHE must be in a position to confidently state that we know where the contamination is and is not present.



- The real world is inherently more complex than we can sometimes appreciate; therefore, most environmental work constitutes an oversimplification of a more heterogeneous environment. Delineating to non-detect provides additional assurance that trends observed in limited data sets reflect genuine declines and not localized variations.

With regard to delineation objectives for naturally occurring contaminants, delineation to background concentrations is typically expected noting some additional sampling might be required to establish the background target concentrations for a given site setting.

Communication with VCPRP Coordinator and Project Managers. Candid and open communication with VCPRP staff cannot be overemphasized. The VCPRP strongly encourages voluntary parties to be directly involved, along with their consultants, in discussions concerning investigation strategies. VCPRP staff can facilitate a complete understanding of investigative objectives, share experiences in terms of successful investigative techniques, and identify investigative options that may not have been considered; regulatory guidance is sometimes revised providing new investigation options for a voluntary party that have not been previously considered.

VCI WORK PLAN AND REPORT FORMATS

VCI Work Plan Format

General: This guidance presents the recommended content and format for VCI Work Plans for environmental investigations at a property. **Please note that this guidance is comprehensive and does not segregate work plan content or format based on the varied contamination classification levels.** Many of the content items are common for all contamination classification levels; this guidance should be used and adapted as appropriate for the specific property and contamination classification being addressed. Please note also that the format guidance for the VCI Report requests some information from sources other than the VCI.

1.0 Introduction and Work Plan Rationale

- 1.1 VCI Objectives/Rationale - Provide a general overview of the objectives and rationale for conducting the VCI.
- 1.2 Data Needs and Objectives - Identify the types of data needed to achieve the VCI objectives. Provide discussion of the specific objectives for the various types of data by indicating how the data will allow VCI objectives to be achieved.
- 1.3 Work Plan Approach - Describe how the general work plan strategy has been developed and how proposed investigative activities will achieve the objectives of the VCI.



SECTION 9

2.0 VCI Tasks

- 2.1 Proposed Field Investigation - Describe the proposed investigative activities relative to items 2.1.1 through 2.1.8 below. **Address only activities applicable to the contamination classification for the property as defined by the Scope of Work.**
- 2.1.1 Source Area(s) Characterization - Describe how the vertical and horizontal extent and degree of contamination for all source areas (soil, ground water, surface water, sediments, air, etc.) will be investigated.
- 2.1.2 Extent of Contamination in Soil - Describe how the vertical and horizontal extent of soil contamination emanating from each source area will be investigated.
- 2.1.3 Extent of Contamination in Ground Water - Define how the vertical and horizontal extent of ground water contamination emanating from each source area will be investigated.
- 2.1.4 Vadose Zone Physical Characteristics - Describe how physical characteristics of the vadose zone will be investigated.
- 2.1.5 Aquifer Characteristics - Describe the aquifer parameters that will be investigated during the VCI such as transmissivity, vertical and horizontal hydraulic conductivity, storativity, specific yield, boundary conditions, etc. Describe how the aquifer parameters are to be determined.
- 2.1.6 Investigative Derived Wastes - Describe how all investigative derived wastes are to be handled, treated, analyzed, and disposed of.
- 2.1.7 Regulatory Involvement - Describe all areas of the proposed investigation where local, state and/or federal regulatory authority will apply, such as well drilling, soil boring plugging, drilling permits, etc.
- 2.1.8 Permitting - Identify all state, local, or federal permits necessary for conducting the investigation.
- 2.2 Sampling Strategy - Describe the sampling strategy and objectives for the VCI; this discussion should be associated with items 2.2.1 through 2.2.4 below.
- 2.2.1 Sampling Objectives - Describe objectives of sampling efforts relative to the intended use of the data.



- 2.2.2 Sampling Locations and Frequency - This section should define what, when, where, and why samples will be collected. This would include samples for field screening and samples for laboratory analysis relative to all media being sampled.
- 2.2.3 Sampling Equipment and Procedures - Provide step-by-step instructions indicating how each sample will be collected. The instructions should also identify all equipment to be used for sample collection and decontamination procedures.
- 2.2.4 Sample Handling and Analysis - This should consist of a table that identifies sample preservation methods, types of sampling containers, shipping procedures and requirements, holding times, field screening analytical methods, and laboratory analytical methods.
- 2.3 Vadose Zone Contaminant Transport Modeling - If vadose zone modeling is proposed, identify the proposed model and the data necessary for input parameters. Describe in detail the nature of field testing that will be conducted to determine model input parameters. All modeling must be conducted in accordance with BER's policy "Minimum Standards for Model Use", BER-RS-007.
- 2.4 Ground Water Flow and Contaminant Transport Modeling - If ground water flow and contaminant transport modeling is proposed, describe in detail the proposed model(s) and the required model input parameters. Describe in detail any testing proposed to be conducted to determine model input parameters. All modeling must be conducted in accordance with BER's policy "Minimum Standards for Model Use", BER-RS-007.
- 2.5 Identify Potential Receptors - Inventory public and/or private water supply wells within one mile downgradient of the property, locate human populations (names and addresses), identify surface water bodies, and delineate any sensitive ecosystems, such as habitat for endangered species, that have been or may be impacted by contamination from the property.
- 2.6 Land Use Determination - Determine the current and future land use on and surrounding the property.
- 2.7 Other - Describe in detail other proposed investigative techniques.

3.0 Schedule

Provide a detailed schedule of proposed VCI activities which specifically identifies the dates and time frames for implementing and completing the VCI, including initiation of field work and submittal of VCI Report.



SECTION 9

4.0 References

Provide a comprehensive listing of resources referenced in preparing the VCI Work Plan.

5.0 Tables

Provide tables of information and data as appropriate for quick reference within the VCI Work Plan. Tabulated data such as field screening data, laboratory analytical data, water level data, well completion data, etc., from previous investigations should be included.

6.0 Figures

At a minimum the following figures must be included within the VCI Work Plan (note - all figures must be to scale):

- A figure based on a USGS 7.5' topographic quadrangle map depicting the property location.
- A Site Map that depicts the entire property, clearly depicts property boundaries, and includes buildings and other pertinent features on the property and surrounding properties including potential source areas and potentially impacted receptors.
- A figure that depicts proposed sampling locations for the VCI.
- Any figures from previous investigation reports such as potentiometric maps or figures depicting known source areas and the known extent of contamination.

7.0 Appendix A - Quality Assurance Project Plan

A Quality Assurance Project Plan (QAPP) must be developed to describe the policy, organization, functional activities, and quality control and quality assurance protocols necessary to achieve the level of data quality required for its intended use. The QAPP must define the following information:

- 7.1 Key Personnel - Key personnel or organizations that are necessary for implementing each activity during the VCI, along with their responsibilities, must be identified.
- 7.2 Quality Assurance Objectives for Data - The degree of accuracy of sample analysis and how this degree of accuracy will be achieved must be identified. Also include within this section the numbers of, frequency and types of QA/QC samples such as trip blanks, field blanks, equipment blanks, and replicates to be collected.



- 7.3 Sample Custody - Describe how Chain of Custody will be maintained for samples collected for laboratory analysis.
- 7.4 Analytical Procedures - Indicate what specific laboratory methods will be used for analysis of samples.
- 7.5 Laboratory QA/QC - Describe the internal QA/QC program to which the laboratory conducting the analyses will adhere. Be sure to identify the laboratory that will be used.
- 7.6 Data Validation and Reporting - Describe how laboratory results will be validated to determine whether QA/QC protocol have been met. A summary of the data validation process including discussion of the results from analysis of replicates, laboratory or method blanks, matrix spikes and matrix spike duplicates, trip blanks, field blanks, equipment (rinsate) blanks, and other QA/QC samples will be required in the VCI Report. The VCI Work Plan should indicate how data validation will be conducted and that the results from data validation will be provided in the VCI Report.

8.0 Appendix B

A Site Health and Safety Plan consistent with OSHA requirements must be included with the VCI Work Plan.

VCI Report Format

General: This guidance presents the recommended content and format for VCI Reports. **Please note that this guidance is comprehensive and does not segregate work plan content or format based on the varied contamination classification levels.** Many of the content items are common for all contamination classification levels; this guidance should be used and adapted as appropriate for the specific property and contamination classification being addressed. Please note also that the report format requests information that may be found in sources other than the VCI, such as: property records, scientific publications, previous investigations, etc.

1.0 Executive Summary

Provide a preliminary summary of the VCI results.

2.0 Introduction

- 2.1 The introduction should provide a description of the specific objectives developed for the VCI prior to its initiation, include additional objectives established during the implementation of the VCI, and document whether the objectives were achieved or not achieved and why.



SECTION 9

2.2 Property Background - *If this information was provided in a VCI Work Plan, reference it accordingly.*

2.2.1 Property Location and Demographics - Describe the property location; include legal description, street address, city, county, and general demographic information concerning the property area. Discuss population density, zoning, and predominant land usage in the vicinity of the property.

2.2.2 Property History - Provide a brief history of the property including operations, ownership, and past property activities until the time of application to the VCPRP.

2.2.3 Previous Investigations - Summarize results and conclusions from previous investigations conducted for the property (list the titles of all investigation reports that have been prepared). Also provide the dates of the current and previous investigations.

3.0 Investigative Activities

Describe in detail all investigative activities conducted as part of the VCI relative to the tasks outlined in the VCI Scope of Work for the property. Categories of information that may need to be specifically addressed (**as applicable to the property's contamination classification**) include:

- | | |
|--|------------------------------------|
| a. Contaminant source areas | h. Human/target population surveys |
| b. Impacted soil and ground water | i. Area water well surveys |
| c. Impacted surface water and sediments | j. Ecological target surveys |
| d. Property geology and hydrogeology | k. Land use surveys |
| e. Property soil and vadose zone characteristics | |
| f. Property ground water/aquifer characteristics | |
| g. Vadose zone transport, ground water flow, and ground water contamination transport modeling | |

4.0 Property Physical Characteristics

Provide a detailed description of **results** obtained from investigative activities conducted during the VCI. Results should relate to each of the applicable categories listed in Section 3.0 above.



5.0 Nature and Extent of Contamination

Present the results of the characterization for the media investigated at the property. Describe in detail the horizontal and vertical extent of contamination identified for each medium characterized during the VCI. Provide reference to specific analytical results obtained during the VCI. Media that might be addressed during the VCI include:

- a. Sources and source areas
- b. Soils and vadose zone
- c. Air
- d. Ground water
- e. Surface water and sediments

6.0 Contaminant Fate and Transport

- 6.1 Potential Migration Routes - Describe the potential routes of contaminant migration (i.e., air, soil, ground water, surface water, etc.).
- 6.2 Contaminant Characteristics - Describe the physical, chemical, and biological properties of contaminants at the property and provide specifics concerning behavior of these contaminants in the property setting.
- 6.3 Contaminant Migration
 - 6.3.1 Discuss factors affecting contaminant migration for the media of importance (e.g., sorption onto soils, solubility in water, movement of ground water, etc.).
 - 6.3.2 If modeling has been used, discuss modeling methods and results.

7.0 Identification of Potential Receptors and Land Use

- 7.1 Receptors - Identify any receptors which have been impacted or could potentially be impacted by the contamination. Receptors may include water supply wells, human populations, surface water bodies, sensitive ecosystems such as habitat for endangered species, etc.
- 7.2 Potential Risk - Describe the potential threat to impacted or potentially impacted receptors. Include discussion concerning the toxicity of the contaminant(s) as related to the threat or risk posed, how the receptor has been or may be exposed to the contaminant, and other detail to fully identify the risk posed by the contamination.
- 7.3 Land Use - Describe current and future land use of the property and surrounding properties.



SECTION 9

8.0 Summary and Conclusions

8.1 Provide a summary of the VCI results addressing primarily:

8.1.1 Nature and extent of contamination

8.1.2 Contaminant fate and transport

8.1.3 Identified receptors/risk

8.2 Provide conclusions as derived from the VCI. Also address:

8.2.1 Data limitations

8.2.2 Recommendations for additional investigative work.

9.0 Tables

Certain data collected during the VCI must be presented in tables in the VCI Report. Tabulation of specific data must be done **as applicable for the work conducted during the VCI**. Required tables include, but are not limited to:

- 9.1 Soil Quality Field Screening - Provide field screening results for soil as derived from a soil gas survey, surface soil sampling, soil borings, and/or monitoring well borings. More than one table may be required to include the following types of information: 1) sample location identification and sample collection method; 2) date sample was collected and screened; 3) sample interval depth; and 4) results from field screening (concentration and units).
- 9.2 Soil Sample Laboratory Analytical Results - The table should include: 1) sample location identification and sample collection method; 2) date sample was collected; 3) sample depth; 4) target compounds; and 5) concentrations of compounds detected.
- 9.3 Ground Water Screening (Ground Water Survey) - Include the following information: 1) sample location identification and sample collection method; 2) date sample was collected and screened; 3) sample collection depth; and 4) compounds and concentrations (and units) detected during screening.
- 9.4 Well Completion Information - Include the following information: 1) well identification; 2) ground surface elevation; 3) top of casing/measuring point elevation; 4) screen length; 5) top and bottom of screen elevations; 6) total depth of well; 7) static water level elevation; and 8) date of static water level measurement.



- 9.5 Well Purging Data - Provide the following data collected during purging of wells for sampling: 1) date purged; 2) volumes purged; and 3) parameter measurement values (temperature, pH, conductivity, dissolved O₂, etc. - successive parameter measurements should demonstrate stabilization prior to sample collection).
- 9.6 Ground Water Analytical Results - Provide the following information: 1) well identification and sample collection method; 2) date sampled; 3) target compounds; 4) concentrations of contaminants detected; 5) analytical method and detection limits for each compound; and 6) appropriate data validation qualifiers.
- 9.7 Unsaturated and/or Saturated Zone Hydrogeological Testing Results - Tabulate the results from vadose zone and/or aquifer testing.

10.0 Figures

The following figures should be included in the VCI Report **as applicable to work conducted as part of the VCI**.

- 10.1 A figure based on a USGS 7.5' topographic quadrangle depicting the property location.
- 10.2 A Site Map, to scale, that depicts the entire property, property boundaries, buildings and other pertinent features on the property, surrounding properties, potential source areas, and potentially impacted receptors.
- 10.3 A sampling location map that depicts locations of monitoring wells, soil borings, soil gas and ground water survey probe locations, surface soil sampling locations, etc. It may be necessary to prepare separate maps for sampling locations to keep the map legible; e.g., separate maps for monitoring well locations versus ground water survey probe locations.
- 10.4 Potentiometric surface map - control points must be labeled and data such as static water level elevations at control points must be depicted on the map.
- 10.5 Geologic cross sections (as applicable) - at least two cross sections should be prepared that depict the geology of the property. The cross sections should be oriented longitudinally and transversely with respect to the orientation of soil and/or ground water contaminant plumes. The potentiometric surface should be depicted on the cross section.
- 10.6 Soil contamination extent maps - either isocontoured soil analytical data or general extent of soil contamination should be indicated.



SECTION 9

- 10.7 Ground water contamination isoconcentration maps - these maps should depict the extent and degree of ground water contamination. It may be necessary to prepare an isocontour map for each contaminant, suite of contaminants, and total contamination.
- 10.8 Separate phase product isopach map - if separate phase product is encountered, a map depicting product extent and thickness must be provided.

11.0 Appendices

Appendices containing the following material, **as applicable to work conducted during the VCI**, must be included in the VCI Report. Appendices that contain other pertinent material should be developed and included as necessary.

- 11.1 Soil boring and monitoring well construction logs.
- 11.2 Soil gas or ground water survey analytical reports and QA/QC results.
- 11.3 Laboratory analytical reports for soil sample analysis.
- 11.4 Laboratory analytical reports for ground water analysis.
- 11.5 Data validation and usability summary.
- 11.6 Vadose zone or aquifer testing data and parameter estimation calculations.
- 11.7 Vadose zone or ground water flow modeling data and results.
- 11.8 Pertinent correspondence such as communications with regulatory agencies relative to permitting, waste characterization and disposal, etc.
- 11.9 Photographs - preferred by KDHE although not specifically required, photographs of property features, investigative activities, etc., are useful in providing additional documentation for the VCI report.

SECTION 10

QUALITY ASSURANCE AND QUALITY CONTROL





QUALITY ASSURANCE AND QUALITY CONTROL

Introduction

The Kansas Department of Health and Environment (KDHE) relies on environmental sampling data to support a multitude of environmental management, regulatory, and administrative decisions. Accordingly, Quality Assurance and Quality Control (QA/QC) planning is required by the Voluntary Cleanup and Property Redevelopment Program (VCPRP).

QA/QC planning involves more than taking samples by standard protocol and maintaining chain-of-custody forms. In general, the objective of the QA/QC planning process in the VCPRP context is to provide sufficient reliable information to KDHE to accurately assess a property and ultimately to reach a No Further Action determination. This means evaluating existing environmental data and deciding, prior to field investigation, what types and numbers of additional environmental samples are required to meet KDHE's decision-making needs.

Existing environmental data and data collected during the Voluntary Cleanup Investigation (VCI), along with risk factors, will be used by KDHE to determine if remediation is required at a property. If remediation is indicated, additional sampling data may be required to develop a proposal for remediation. Finally, environmental sampling will be required to verify that remediation has been successful before a No Further Action determination can be issued. An additional goal of QA/QC planning is to efficiently provide the data necessary for appropriate decision making at the most reasonable cost to the voluntary party. Therefore, thorough QA/QC planning and documentation in the form of a quality assurance project plan (QAPP) will be required for all work plans and reports submitted to the VCPRP.

Media Sampling Considerations

Environmental investigations typically require sampling of soil, water, and/or air media to demonstrate whether or not hazardous substances are present at a property, to determine whether they have migrated from their original locations, and to evaluate risk posed to human health and the environment. Air, water, and soil are heterogenous media and the distribution of contaminants is typically heterogenous in these media. Normally, environmental sampling strategies involve biased sampling, also known as non-random or judgmental sampling. Biased sampling consists of using knowledge of the property and visual observations to guide the selection of sample types and locations. Sampling choices should be based on the need to support KDHE's decision-making process.

QAPP development involves determining what kinds of releases may have occurred at a property so a sampling program may be designed to obtain data for determining the risk to human health and the environment. To minimize error, all sampling should follow applicable and appropriate Standard Operating Procedure (SOP) protocols. The importance of the QAPP in ensuring that location and



media meet appropriate methodologies, and appropriate sampling equipment, containers, and preservatives are employed cannot be overemphasized. Proper documentation of field procedures is an important part of a QA/QC program. Failure to provide documentation of the environmental sampling process can limit the value and credibility of analytical data. The QAPP should also contain appropriate quality checks on the sampling procedure including, but not limited to, field duplicates, field blanks, trip blanks, spiked samples, and field rinsate samples.

The following sampling goals should be considered during the QA/QC planning process: 1) sampling should characterize the property and any contamination sources; 2) known releases should be sampled, as should areas of observed contamination; and 3) levels of contamination at specific targets, such as property boundaries, drinking water sources, or the location of human or environmental targets (residences, wetlands, etc.) should be measured so that appropriate risk factors may be determined.

Approved environmental laboratories (Section 12) will have acceptable QA/QC procedures in place. It is the applicant or their consultant, however, that must request the analyses that will meet the objectives for the project. Quantification limits must equal or be less than the target cleanup levels (Tier 2 - Risk-based Summary Table defined in Section 14) or established MCLs for drinking water.

The Quality Assurance Project Plan

Qualified environmental consultants (Section 11) should have a standard QAPP in place and all of the consultant's employees should be trained in the implementation of that plan. This off-the-shelf QAPP may be modified as appropriate for each individual property and included in work plans submitted to KDHE. The QAPP should include all field sampling and chain-of-custody SOPs. It should also identify key personnel and organizations responsible for each step in the environmental sampling and analysis process. Each project-specific QAPP will include the analytical procedures and QA/QC programs for the laboratories to which samples will be submitted.

Each investigation report submitted to KDHE will contain a section describing how laboratory results were validated to determine if the QA/QC objectives were achieved. This should include a description of the numbers and types of QA/QC samples such as duplicates, trip blanks, field blanks, rinsate samples, and field spikes or standard samples run. If field analysis is carried out, full documentation of calibration, standards run, and other QA/QC SOPs for validating in-field analyses must be included in the report. Additionally, environmental data collected must be assessed with regard to meeting KDHE's decision-making needs.

The United States Environmental Protection Agency (EPA) has published a number of guidance documents which describe QA/QC procedures appropriate for field investigations of environmental properties.



Reporting Requirements

Consultants should follow reporting requirements outlined in this guidance document. This will expedite KDHE's response and decision making. Reports should also be carefully proofed before submission for both language and technical information to avoid errors. Data tables should be checked for consistency and accuracy against original analytical reports. Evaluation of risk factors should be supported by the property-specific data contained in the report. Ambiguous or conflicting statements and references should be eliminated. Reports should be written in plain technical language so that any qualified technical person may understand the report contents, even though they may be unfamiliar with the property. KDHE approval of remediation plans or the issuance of No Further Action determinations under the VCPRP will be based on the property-specific environmental data submitted by the voluntary parties and their consultants; as a result, clarity of presentation and the inclusion of appropriate QA/QC are vital components of the VCPRP process.

Expediting the VCPRP Process

Voluntary parties and consultants can assist KDHE in expediting property evaluation and remediation by submitting technically correct and quality-checked applications, reports, and data in a timely manner. Since the goal of the VCPRP is to return contaminated property to productive use as soon as possible, KDHE's decision-making process will be enhanced by submittal of quality work directed toward providing KDHE with the data needed for evaluating risks to human health and the environment. The VCPRP contains time constraints on both the applicant and KDHE at certain steps in the process. These time frames should be considered by all parties as maximum allowable time for decisions, and properties can progress through the VCPRP process much more quickly with quality submittals and consequent rapid review and decision-making by KDHE.

SECTION 11

CHOOSING

A

CONSULTANT





CHOOSING A CONSULTANT

Purpose

This section provides guidance for selecting an environmental consultant to conduct investigatory and remedial actions under KDHE's Voluntary Cleanup and Property Redevelopment Program (VCPRP). Selecting an appropriate and qualified environmental consultant to conduct these actions is a crucial step for the voluntary party. The skills, experience, and track records of environmental consultants vary widely. Therefore, it will be beneficial to select a consultant carefully using the best information available.

Benefits of selecting a qualified and experienced consultant include:

- Saving time and money;
- Satisfactorily completing projects the first time;
- Establishing better relationships with regulatory agencies;
- Submittal of investigations and reports in a timely fashion;
- Satisfaction by the client, the consultant, and the regulatory staff with the final outcome; and,
- Minimizing unexpected contingencies.

Process for Selecting a Consultant

The voluntary party should follow these five steps to collect the information necessary to choose a consultant:

STEP 1: The voluntary party should determine the overall scope of the project (i.e., type of action required, history, etc.). The voluntary party should also be familiar with the applicable regulatory requirements. A good understanding of the problem and what needs to be done will assist in determining which consultant is best qualified for the project. KDHE VCPRP staff are available to discuss, in general terms, the potential scope of activities for a prospective site.

STEP 2: Compile a list of prospective consultants by checking professional societies or directories, interviewing attorneys, and contacting other companies in your industry or related industries who have conducted similar investigations and cleanups. Consultants commonly maintain a generic Statement of Qualifications containing basic information on the company, staff, and types of projects with which the company has experience. This general information should be used to help narrow the field of consultants qualified to do the work for the particular property. Next, the voluntary party should contact the consultant to more thoroughly understand what the consultant is qualified to do. Suggested questions include:

- Type of environmental consultant;
- Number and type of staff;



- Years in business;
- Number of projects completed in Kansas;
- Largest project in last five years;
- Kinds of services offered;
- Typical response time in the event of an emergency;
- Confirmation of appropriate insurance and bondable status;
- Estimated annual revenues; and,
- Banking references.

STEP 3: A summary of the contamination problem should be developed by the voluntary party which includes any readily available information about the property, potential sources of contamination and company records on hazardous substances used or stored. Include a brief written description of the historical use of the property, current use, and the work that the voluntary party thinks needs to be done. Submit the report to interested consultants that appear to be qualified on first appraisal and request that the consultant submit a proposal which includes:

- Possible procedures for investigation or cleanup of the property;
- Amount of time needed for completion (not including time required for review by the KDHE);
- Estimation of cost;
- Itemized fee schedule;
- Summary of experience applicable to the property, including the client's name and address; and,
- Names of staff that would be assigned to the project, including their current resumes and references.

STEP 4: The voluntary party should take time to research the consultant by obtaining references from companies that have hired the consultant and also by contacting companies that are currently working with the consultant. Suggested questions include:

- Was the consultant knowledgeable about the investigation and cleanup?
- Did the consultant meet the stated work and project deadlines?
- Did the consultant keep you informed of project development and aware of all available investigative and cleanup options?
- Did any problems arise during your work with the consultant, and were they satisfactorily resolved?
- Did the consultant work effectively with the KDHE staff, local officials, and you?
- Were you satisfied with the work performed by the consultant?
- Did the final costs seem in line with the original estimate?

STEP 5: After evaluating the proposals received and contacting references, the voluntary party should prepare a short list of the most qualified consultants. Interviews should be arranged between the



SECTION 11

voluntary party and the prospective consulting firm. The interviews should be used to clarify any confusing aspects of the consultant proposals and evaluate the consultants' qualifications in more depth than given on the proposals. Some example questions include:

- Does the consultant have experience with the kind of project you are proposing?
- Is the consultant's staff trained in the use of field instruments and procedures?
- Does the consultant own testing or monitoring equipment and does their firm have the staff to properly maintain and calibrate the equipment?
- Which procedures does the consultant conduct and which do they subcontract? (Ask for names of subcontractors, and check on their experience.)
- Are subcontractor activities competitively bid?
- How will the consultant charge for subcontractor management costs? (It should be by hourly rate or percentage of fees, not both.)
- Will the consultant use an in-house laboratory or contract with an outside laboratory?
- What projects has the firm completed in Kansas?
- Does the consultant have an established field protocol and chain-of-custody SOP for sampling?
- Do the consultant and the subcontractor have professional and environmental liability insurance?
- What is the consultant's current workload? Are current projects on schedule?
- Is the consultant's field staff trained in safety procedures as required by Occupational Safety and Health Administration?
- Who are the specific consultant employees who will work on your project and do they have relevant experience?
- Does the consultant have references?

Things to look out for when examining consulting firms for potential hire; there are several cautionary symptoms to look for that might suggest a potential for future dissatisfaction with the firm's performance.

A few examples include:

- Cost estimates significantly lower than those of competing firms;
- Hard-sell approaches;
- Minimizing or maximizing potential technical or legal problems;
- Strong biases for or against certain cleanup remedies;
- Conflict of interest; and,
- Overly optimistic time lines.

Costs

There are two methods consultants generally use to charge for work performed. The method chosen depends on the type and scope of the project.



Cost plus fixed fee contract is the most common type of contract consultants use. The voluntary party will be charged for salaries and expenses plus a fixed fee to be determined by you and the consultant. This method works well for projects where the scope is unclear, extensive investigation is needed or experimental processes are used.

Fixed price is the other method used by consultants. The consultant will charge the voluntary party a firm sum for the entire project. This method is generally used for small projects or when the scope is clearly defined.

Whichever method is chosen, the voluntary party should set up clear, specific criteria by which to evaluate and compare cost estimates.

Making the Final Decision

The information collected through the consulting firm's submitted proposal, the reference check of the firm and the individual staff members, and the interview should provide enough information to select a consultant. It is important to remember to hire a consulting firm that is experienced in the same type of work as that required for the particular property. By researching the firm one will get a feel for its honesty and its ability; ultimately, this will save the voluntary party time, money, and stress.

A list of consultants is available from KDHE upon request. The appearance of a consultant's name on the list does not represent that the consultant is qualified or recommended to perform VCPRP activities. The list simply includes those consultants who have submitted their companies' names to KDHE.



SECTION 11

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

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SECTION 12

CHOOSING

A

LABORATORY





SECTION 12

CHOOSING A LABORATORY

Quality environmental samples are expensive and time consuming to collect and require quality laboratory analyses to maintain their value. Voluntary parties and their consultants must have environmental samples analyzed by a laboratory qualified to analyze the suspected contaminants and contaminated media. Such laboratories must also be certified by the Kansas Department of Health and Environment, Division of Health and Environmental Laboratories (DHEL). The Kansas Environmental Laboratory Certification program was authorized by the Kansas legislature in 1978 with the enactment of K.S.A. 65-1,109a. The program was implemented by the enactment of K.A.R. 28-15-35 through 28-15-37. In 1999 the state of Kansas became a nationally recognized accrediting authority. This recognition was obtained as the KDHE Environmental Laboratory Improvement Office implemented the National Environmental Laboratory Accreditation Conference (NELAC) standards for laboratory accreditation.

The KDHE Laboratory Improvement Program Office maintains a list of NELAC accredited laboratories on its web page accessible through the Internet at www.kdhe.state.ks.us/envlab/index.html. Qualified environmental consultants should know which laboratories may be used for each environmental media and for each type of contaminant likely to be encountered at the property.

Voluntary parties who wish to shop around for the best laboratory to fill their particular needs should contact several accredited commercial laboratories and obtain information useful to compare services, such as:

- Can the laboratory analyze the media of concern for the known or suspected contaminants?
- Can the laboratory handle the anticipated number of samples within the holding time limits for the various types of samples to be collected?
- Can the consultant transport or ship the samples to the laboratory within the holding limits for the various samples to be collected?
- Does the laboratory have any special requirements for the anticipated types of samples and can the consultant collect, preserve, and transport samples to meet those requirements?
- Does the laboratory's schedule for producing analytical results and their data formats meet the project schedule and data needs?
- What will the analyses cost?

SECTION 13

VCPRP

SCOPES

OF

WORK

FOR

CLEANUP





VCPRP SCOPES OF WORK FOR CLEANUP

The Voluntary Cleanup Decision

KDHE will use the information contained in the approved Voluntary Cleanup Investigation Report to support a No Further Action determination or to determine whether a voluntary cleanup of the property will be necessary. A voluntary cleanup will be required when the analytical data contained in the investigation report indicates whether contamination at a property exceeds chemical- and media-specific risk-based cleanup levels as established by KDHE (reference the Risk-based Standards for Kansas Manual), or whether conditions at the property are in violation of other applicable federal, state, and local laws and/or regulations. Voluntary cleanup will be required by KDHE to protect human health or the environment if the established cleanup standards are exceeded. A No Further Action determination may be issued by KDHE if analytical data indicates that the established cleanup standards have been met.

Voluntary cleanups may be as simple as monitoring or establishing institutional controls (Environmental Use Controls) or they may involve actual cleanup such as soil removal, ground water treatment systems, in situ treatment, etc. The scopes of work for a voluntary cleanup presented in this section provide general guidance to voluntary parties and their consultants in preparing necessary documentation. Additionally, documentation of QA/QC and health and safety planning will be required for the Voluntary Cleanup Plan. The voluntary party may elect to conduct a property-specific risk analysis concurrent with preparing a Voluntary Cleanup Plan to support the selected cleanup alternative and/or to justify the property-specific cleanup levels proposed in the cleanup plan. The voluntary party must obtain KDHE's approval before initiating a property-specific risk analysis.

The Voluntary Cleanup Proposal

Following KDHE's determination that a voluntary cleanup will be required at a property, KDHE will notify the voluntary party of this decision. The voluntary party is then to submit a Voluntary Cleanup Proposal to the KDHE following the scope of work contained in this section. The Voluntary Cleanup Proposal must compare a minimum of two alternatives, not including a "no action" alternative. The proposal must document the expected ability of each cleanup alternative to obtain the degree of cleanup and control of contaminants necessary to meet applicable cleanup levels. The Voluntary Cleanup Proposal must also select one of the proposed remedial alternatives as the preferred alternative and provide a full description and evaluation of the preferred alternative.

The Voluntary Cleanup Plan

KDHE will review the Voluntary Cleanup Proposal and determine if the preferred alternative is acceptable. Following KDHE's approval of the Voluntary Cleanup Proposal, the voluntary party will prepare a Voluntary Cleanup Plan following the scope of work contained in this section. Any pre-design work must be completed prior to submittal of the Voluntary Cleanup Plan. Should pre-design



work be necessary at a property, the voluntary party should submit an appropriate work plan to KDHE for approval before proceeding. Once an acceptable Voluntary Cleanup Plan has been submitted, the public will be formally notified and any comments received from the public must be considered before final approval is provided by KDHE. At KDHE's discretion, the preferred alternative may be altered to incorporate appropriate and substantive comments and issues raised by the public.

The Voluntary Cleanup Plan will essentially be a work plan for cleanup and/or monitoring at a property. The complexity of the plan will vary with each property. The plan may be as simple as a long-term monitoring plan or as complex as a detailed engineering design for an aggressive remediation system. The primary objectives of a Voluntary Cleanup Plan are:

- 1) All tasks necessary to implement the selected voluntary cleanup alternative must be described;
- 2) Detailed design plans and specifications for the full implementation of the cleanup must be provided, as well as an operation and maintenance manual;
- 3) All necessary easements and permits required for implementation of the cleanup must be identified and obtained;
- 4) The risk-based cleanup levels selected for the property must be summarized;
- 5) A plan to monitor the effectiveness of the cleanup during implementation and operation must be included; and,
- 6) A verification monitoring plan must be included.

The primary objectives of monitoring are to:

- 1) Provide continuous evaluation of property conditions including hydrogeologic conditions, fluctuations of contaminant levels in the various environmental media, etc.;
- 2) Evaluate the progress of ongoing remediation efforts;
- 3) Establish compliance with cleanup levels at the conclusion of cleanup;
- 4) Identify post-remedy changes in contaminant levels; and,
- 5) Provide a basis to justify issuance of a No Further Action determination.



The Voluntary Cleanup Report

A Voluntary Cleanup Report will be submitted to KDHE when the cleanup levels contained in the Voluntary Cleanup Plan have been attained. The voluntary party will know when the cleanup levels have been achieved through monitoring conducted consistent with the monitoring plan contained in the cleanup plan. In some cases, such as a property where the voluntary cleanup consists only of excavation and treatment or disposal of contaminated soil, the pre-established cleanup levels can be readily achieved, at which time the cleanup would be considered complete. Verification sampling is required before backfilling with clean or treated soil. In ground water cleanups, KDHE may require ground water monitoring for an additional period of time to verify achievement of cleanup levels once the cleanup level is initially reached.

Generally, the Voluntary Cleanup Report must demonstrate that one or more of the applicable criteria listed below have been achieved:

Ground Water and Surface Water Criteria:

- 1) Analytical results from indicator sampling locations, as contained in the KDHE-approved Voluntary Cleanup Plan, indicate concentrations of contaminants are below established cleanup objectives and have been maintained for four (4) consecutive, equally time-sequenced sampling episodes conducted under KDHE oversight over a period of not less than two (2) years; *or*
- 2) Analytical results from indicator sampling locations, as specified in the KDHE-approved Voluntary Cleanup Plan, do not exceed background¹ levels for four (4) consecutive, equally time-sequenced sampling episodes conducted under KDHE oversight over a period of not less than two (2) years.

Soil Criteria:

- 1) Analytical results do not exceed the pre-established soil cleanup levels for discrete sampling of the soil at locations and depths as specified in the KDHE-approved Voluntary Cleanup Plan.
- 2) Analytical results do not exceed background levels for discrete sampling of the soil at locations and depths specified in the KDHE-approved Voluntary Cleanup Plan.

¹ Background levels are defined for the purpose of the VCPRP to include concentrations of contaminants that are:

- 1) Naturally occurring levels, which are ambient concentrations of chemicals present in the environment that have not been influenced by humans; and
- 2) Anthropogenic levels, which are concentrations of chemicals that are present in the environment due to human-made non-property sources



Special Considerations:

- 1) In some instances, it may be infeasible to entirely remove soil contamination at a property. The voluntary party may still be able to petition KDHE for a No Further Action determination if the property can be demonstrated to meet the following conditions: an effort must be made to isolate the contamination from future leaching or surficial exposure, as through capping, stabilization, or institutional controls; the voluntary party must demonstrate that no continuing sources of contamination exist at the property; and the voluntary party must have conducted no less than two years of ground water (or surface water, as appropriate) monitoring subsequent to the soil remedy to verify that the remnant soil contamination has not impacted ground water or surface water and is not likely to do so in the future.
- 2) If the above criteria do not apply to a property, the voluntary party may still petition for a No Further Action determination by providing appropriate justification and a concise description of all special circumstances for the subject property.

Once the criteria listed above for completion of the voluntary cleanup have been achieved, the voluntary party must submit the Voluntary Cleanup Report to KDHE for review and approval. The cleanup report will contain adequate documentation to verify that one of the criteria above has been achieved. A suggested format for a Voluntary Cleanup Report is included in this section.

KDHE will review the Voluntary Cleanup Report and will notify the voluntary party by letter of the outcome of the review. Additional information may be requested by KDHE prior to final approval of the Voluntary Cleanup Report. KDHE expects the report to be brief and concise, referencing the Voluntary Cleanup Plan, Voluntary Cleanup Investigation Report, and monitoring reports to the extent practical. The Voluntary Cleanup Report will enable KDHE to determine that the cleanup has been completed and that verification sampling is now appropriate prior to final closure of the property.



VOLUNTARY CLEANUP PROPOSAL

Scope of Work

INTRODUCTION

This Scope of Work provides guidance for preparing a Voluntary Cleanup Proposal. If KDHE determines that cleanup or monitoring is necessary to address contamination at a property, the voluntary party will prepare a Voluntary Cleanup Proposal in accordance with this scope of work and K.A.R. 28-71-9(d) for KDHE's review and approval. The objectives of the proposal are to describe cleanup alternatives for the property and the voluntary party's process and rationale used to select a cleanup alternative that will meet the following objectives:

- 1) Be protective of human health and the environment for documented present and future land uses;
- 2) Meet all applicable state standards and guidelines for cleanup or meet risk-based cleanup goals calculated through an approved property-specific risk analysis; and,
- 3) Evaluate remedial alternatives that are proven reliable and economically and technically feasible.

The Voluntary Cleanup Proposal must compare a minimum of two alternatives, not including the "no action" alternative, document the ability of each remedial alternative to attain the degree of cleanup and control of contaminants required, and provide a full description and evaluation of the voluntary party's preferred remedial alternative. In developing the Voluntary Cleanup Proposal and comparing cleanup alternatives, the voluntary party may select one of three available approaches to determine required cleanup levels for contaminants at the property as outlined in K.A.R. 28-71-11(c) by:

- 1) Using KDHE-approved methods to determine background levels;
- 2) Using risk-based cleanup levels established by KDHE; or,
- 3) Conducting a property-specific risk analysis employing KDHE-approved formulas, exposure parameters, and land use scenarios.

Guidance for the above mentioned methods of determining cleanup levels are contained in the Risk-based Standards for Kansas Manual. The approach selected and resulting cleanup levels determined for the property must be approved by KDHE.

SELECTION OF CLEANUP ALTERNATIVES FOR EVALUATION

The process for comparing cleanup alternatives in the Voluntary Cleanup Proposal should consist of:



- 1) Developing an initial list of remedial alternatives and technologies that are applicable to the contaminants, the impacted media, and the potential exposure pathway(s), and that have the potential to meet the cleanup levels required for the property;
- 2) Establishing screening criteria, generally including effectiveness, implementability, cost, and other pertinent criteria, and applying the criteria to the initial list of remedial alternatives and technologies to derive a minimum of two cleanup alternatives that will be retained for further detailed evaluation;
- 3) Conducting the detailed evaluation based on prescribed criteria (discussed below); and,
- 4) Proposing a cleanup alternative which will meet established cleanup levels and is the most appropriate based on the evaluation process.

The initial screening of alternatives is not required, but is recommended if various plausible cleanup options exist. Initial screening may not be useful in some instances where available cleanup options are limited. If multiple media are impacted by contamination (for example surface soil, subsurface soil, and ground water), media-specific remedial alternatives may need to be evaluated and then combined into multiple media remedial alternatives for more detailed evaluation. For additional guidance and considerations on development of cleanup alternatives, refer to K.A.R. 28-71-11(a) through (g).

EVALUATION OF REMEDIAL ALTERNATIVES

Once the minimum of two cleanup alternatives (not including the “no action” alternative) have been selected for evaluation and comparison, the next step involves conducting an evaluation of the cleanup alternatives using consistent evaluation criteria that allow the alternatives to be analyzed individually and comparatively to document the rationale behind the selection of the voluntary party’s preferred alternative. The criteria used for the detailed evaluation include:

- 1) **Overall protection of human health environment** - This criterion considers meeting cleanup levels for various impacted media, eliminating or mitigating direct or indirect risk exposure pathways, considers current and potential future land use scenarios, and considers short- and long-term protection.
- 2) **Compliance with federal, state, and/or local laws, regulations, and rules** - All aspects of the remedial alternative must adhere to any applicable laws, rules, or regulations. These types of requirements are referred to in federal guidance as “Applicable or Relevant and Appropriate Requirements” (ARARs). A listing of some common ARARs may be obtained from KDHE upon request.
- 3) **Long-term and short-term effectiveness** - Each alternative should be evaluated on its effectiveness in providing protection of human health and the environment. Short-term effectiveness refers to the effectiveness during the period of construction,



SECTION 13

implementation, and active cleanup; long-term refers to effectiveness after the cleanup is complete. When considering effectiveness, emphasis should be directed toward the reductions in contaminant toxicity, mobility, and volume that each alternative will achieve.

- 4) **Implementability** - Refers to the feasibility of implementing a cleanup action considering technical and administrative requirements. Technical considerations include feasibility of constructing, operating, and maintaining cleanup systems and meeting technology-specific regulations. Administrative considerations generally include ability to obtain approvals from regulatory entities as would be required for discharge permits, disposal authorizations, etc.
- 5) **Cost** - The cost of implementing each cleanup alternative must be estimated for comparison. Costs to consider include capital costs (direct - construction, equipment, etc.; indirect - engineering, permit fees, start-up costs), future operation and maintenance (O&M) costs, monitoring costs, and other associated costs. If the remedial alternatives provide varying overall cleanup time frames, the future costing should account for the alternative-specific cleanup time frame.
- 6) **Community acceptance** - Anticipated issues or concerns the public may have regarding each remedial alternative must be considered. The VCPRP process requires public notification and invites public comment on the Voluntary Cleanup Plan (which follows the approved Voluntary Cleanup Proposal). Considerations for community acceptance of cleanup alternatives should be taken into account throughout the cleanup alternative development process.

SELECTION OF A PREFERRED CLEANUP ALTERNATIVE

Following the cleanup alternative development and evaluation process, the voluntary party will select and propose a preferred cleanup alternative to KDHE. The preferred remedial alternative will be described in the Voluntary Cleanup Proposal with documentation of the alternative selection and evaluation process.



VOLUNTARY CLEANUP PLAN

Scope of Work

This scope of work presents the recommended content and format for the Voluntary Cleanup Plan. **Please note that this guidance is comprehensive and does not segregate work plan content or format based on the varied contamination classification levels or the type of cleanup.** Since many of the content items are common for all contamination classification levels and the primary difference between classification levels relates to the affected environmental media, this guidance should be used and adapted as appropriate for the specific conditions at the property being addressed.

1.0 Introduction

- 1.1 Property Background/History - Provide a very brief overview of the property background and investigative history including information such as the property location (city, county, legal description, street address, etc.), what the property is used for and what it has been used for in the past, and other pertinent information about the property. The Voluntary Cleanup Investigation may be referenced in lieu of repeating the information in the Voluntary Cleanup Plan.
- 1.2 Objectives - Provide a concise overview of the objectives of the Voluntary Cleanup Plan, the conceptual remedial approach for the property, and how the remedial approach is intended to accomplish the objectives of the cleanup with specific reference provided to contaminants and sources, contaminated media, migration pathways, exposure pathways, and applicable cleanup levels. The Voluntary Cleanup Proposal may be referenced in lieu of repeating the information in the Voluntary Cleanup Plan.

2.0 Cleanup Tasks

This section of the Voluntary Cleanup Plan describes the procedures for implementation of remediation or monitoring. Detail sufficient to meet KDHE's information needs for approval of the plan must be included. Voluntary parties must adapt the required content outlined in this guidance to the specific conditions at their property.

- 2.1 Definition of Cleanup - This section will define the proposed voluntary cleanup. Specifics on the nature, extent, and concentrations of contamination to be cleaned up should be included as well as a description of the general nature of the remediation to be implemented and cleanup goals to be achieved. Reference to an approved Voluntary Cleanup Investigation Report or Voluntary Cleanup Proposal may be made in lieu of repeating the information in the Voluntary Cleanup Plan.



SECTION 13

- 2.1.1 Soil Contamination - Discuss the vertical and horizontal extent and degree of contamination with reference to appropriate figures.
- 2.1.2 Ground Water Contamination - Discuss the vertical and horizontal extent and degree of contamination with reference to appropriate figures.
- 2.1.3 Cleanup Objectives - *This is the most important part of a Voluntary Cleanup Plan.* In this section, the voluntary party will present the rationale for deciding which of the contaminants described in 2.1.1 and 2.1.2 will need to be cleaned up and the specific cleanup level for each contaminant. Cleanup objectives will be risk-based and the voluntary party will use the Risk-Based Standards for Kansas (RSK) in determining what levels of contamination will become the cleanup objectives. Basically, there are three levels or Tiers for determining cleanup objectives:
- 1) Tier 1 cleanup objectives are determined only for contaminants that are naturally occurring in the environment. In these cases, a voluntary party may choose to clean up a property to background levels for appropriate contaminants. Methods for determining background levels are included in RSK.
 - 2) Tier 2 cleanup objectives consist of specific levels of each contaminant for soil and water media in non-residential and residential land use settings that may remain at a property after cleanup. These values are based on risk to human health and the environment and are tabulated in RSK. KDHE anticipates that using the pre-established contaminant levels will be the most common method for setting cleanup objectives for anthropogenic contaminants.
 - 3) Tier 3 cleanup objectives are based on a property-specific risk analysis performed by the voluntary party in consultation with the VCPRP project manager. Performing a Tier 3 analysis will require considerably more information than either the Tier 1 or Tier 2 methods. Tier 3 evaluations must be performed with KDHE oversight.
- 2.1.4 Cleanup Approach - Discuss the remedial approach to be used, relative to the specifically identified areas of contamination discussed in 2.1.1 and 2.1.2, to reach the cleanup objectives selected in 2.1.3. The remedial approach will vary significantly between properties and this



overview will need to be tailored to the specific property. Listed below are some common remedial actions and approaches.

2.1.4.1 Soil Remediation/Excavation

- 1) Describe areal extent and depth to be excavated and portray those areas on figures;
- 2) Describe contaminated soil handling and disposal procedures;
- 3) Describe any on-property treatment, land farming, stockpile areas, treatment piles, etc., including treatment facilities/methods; and,
- 4) Describe backfilling and regrading to be performed, including origin and analytical testing of replacement soil.

2.1.4.2 Soil Remediation/In-situ Treatment

- 1) Provide descriptions, maps, and cross-sections showing number and location of wells, designed radius of influence, cleanup levels to be achieved, etc.;
- 2) Provide the rationale behind proposed well construction designs and provide an illustration of a typical proposed well construction;
- 3) Describe overall system for injection or extraction, including rates and volumes;
- 4) Describe nature and purpose of any injectate other than ambient air;
- 5) Describe and illustrate system components, including blowers, pumps, and off-gas treatments; and,
- 6) Describe target cleanup goals, time frames, and effluent concentrations.



SECTION 13

2.1.4.3 Ground Water Remediation

- 1) Describe and illustrate treatment processes, the number and location of wells, purpose of wells, and construction of wells;
- 2) Describe nature and purpose of any proposed injectate;
- 3) Describe major treatment system components and illustrate the hydrogeology of the system, including injection or withdrawal rates and expected capture zones or areas of influence of the wells;
- 4) Discuss cleanup goals, performance expectations, and time frames; and,
- 5) Discuss effluent concentrations and the proposed handling, treatment, and disposal of effluent.

2.1.4.4 Other Cleanup Methods

- 1) Provide a detailed description of the remedial process and technology;
- 2) Discuss the remedial objectives for the property and demonstrate that the chosen process will achieve the objectives;
- 3) Discuss past results of the remedial process at other properties where it has been successfully employed; and,
- 4) Describe the monitoring required to determine progress and effectiveness of the proposed process.

2.1.5 Permitting/Regulatory Involvement - Describe all applicable permitting requirements for the proposed remedial project and all local, state, and federal regulatory requirements. Typical permits to be addressed include air discharge permits, solid waste disposal authorizations, ground or surface water appropriation permits, UIC permits for injection or reinjection, NPDES permits for discharge to surface water, local permits for discharge to sanitary sewers, etc. Other requirements to be identified in this section include local building, plumbing, and electrical permits for the project, necessary easements and/or variances and access agreements.



2.1.6 Remediation System Plans and Specifications - If the remedial approach will involve installation of mechanical systems such as soil venting systems, ground water recovery wells, treatment systems, etc., plans and specifications for the mechanical systems must be included in or accompany the Voluntary Cleanup Plan. Engineering drawings and specifications must be submitted to KDHE for review and comment prior to soliciting bids. Project documents must contain sufficient information to allow KDHE reviewers to determine if the proposed system(s) will function as intended and achieve remedial objectives. A Kansas-registered Professional Engineer must seal engineering designs.

2.1.6.1 Maps - Plans must include an appropriate property base map, maps and cross-sections showing vertical and horizontal extent of contamination, and maps portraying the physical relationship of the mechanical systems, wells, etc., to the contamination. Figures provided in previous sections of the plan may be referenced.

2.1.6.2 Equipment Specifications - Manufacturers' cut sheets with performance data for major equipment items must be provided.

2.1.6.3 Process and Instrumentation Diagram (P&ID) - A P&ID must be provided depicting flow rates, system interlocks, major system components, control valving and metering, etc.

2.1.6.4 Wiring Diagram - An electrical wiring one-line or ladder diagram must be provided. A table must be included on the drawing to provide the following information about motors, motor starters, circuit breakers, etc.:

- 1) The type of power supply (phase, cycles, voltage, and amperage capacity);
- 2) Circuit breaker or fuse ratings, motor control sizes, controls, wire sizes, and load for each branch of the circuit; and,
- 3) Interlocks, meters, remote controls, modems, computers or control logic systems, and safety or alarm systems.

2.1.6.5 Property Layout - A diagram must be provided to depict piping sizes and locations, well locations and construction, discharge locations, and all other pertinent remedial system property features.



SECTION 13

2.1.6.6 Building Plans - Elevation and plan views of any equipment buildings to be constructed at the property must also be provided.

2.1.6.7 System Design Criteria - Engineering design information must be provided. This type of information includes, but is not limited to:

- 1) Calculations of head loss for piping (rationale for piping size selection);
- 2) System head loss calculations and rationale for the selection of pumps, blowers, motors, and other major system components;
- 3) Emissions and/or effluent estimation calculations; and,
- 4) Specific system operational parameters (e.g., air-to-water ratios for strippers, allowable flow rates, breakthrough times, pressure capacities, ASME code stamp requirements for GAC vessels, required construction materials for all pertinent equipment, recommended or required instrumentation for equipment, pretreatment requirements, etc.).

2.1.6.8 Operation and Maintenance (O&M) - The Voluntary Cleanup Plan must clearly indicate that an O&M manual will be prepared and submitted and must include a description of the manual's proposed content. The O&M manual will not need to be submitted to KDHE with the Voluntary Cleanup Plan, but should be submitted after system installation and startup in accordance with the schedule provided in the Voluntary Cleanup Plan. The manual should describe all operational procedures and maintenance requirements for any remedial system(s) installed, including detail on what O&M is required for the system, the frequency for O&M tasks, and who will be conducting those tasks.

2.1.6.9 Startup Report - A final Startup Report must be submitted within 60 days following startup of the remedial system(s). The voluntary party may submit the Startup Report and the O&M manual together, in accordance with the schedule provided in the Voluntary Cleanup Plan. The Startup Report is to serve as official notice to KDHE that the system has been installed and



active remediation has commenced, and that the system is operating as designed.

If remedial systems were installed as designed, a statement to that effect will be required. If “As-Built” drawings are prepared, these should be submitted also. Any major modifications to the design upon system installation should be described in detail with supporting drawings, diagrams, and specifications as well as rationale for the changes. The Startup Report may also serve as the initial monitoring report, in which case the content listed in Section 2.1.6 should be included. Suggested content for the Startup Report is listed below:

- 1) Date startup actually occurred;
- 2) Description of any “fine tuning” conducted on the system and the resulting operational parameters that were identified;
- 3) Discussion of any modifications that were made to remedial systems upon installation along with the rationale for modifications;
- 4) A description of problems that occurred during construction of the remedial system(s) or upon startup;
- 5) A tabulation of system monitoring data such as influent, effluent, and emissions analyses;
- 6) Ground water potentiometric surface maps, if applicable, which will demonstrate the capture radius of recovery wells;
- 7) Documentation that all necessary permits were obtained including copies of the permits;
- 8) Discussion of the actual system operation and effectiveness as compared to the predicted performance of the remedial design;
- 9) Boring logs, well construction diagrams, laboratory reports for analytical work, chain-of-custody forms, etc.;



SECTION 13

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

- 10) A discussion of volumes and final handling methods for wastes generated during remedial system implementation; and,
- 11) A general summary of the implementation and an assessment of whether the remedial approach will achieve the remedial objectives.

2.1.7 Monitoring Requirements/Plans - The monitoring requirements listed within this section generally pertain to property monitoring in lieu of remediation, monitoring during remediation, and post-remedial verification monitoring. These monitoring requirements will pertain to monitoring of ground water conditions and quality, and possibly other media such as soil vapor extracted via a remedial system. The voluntary party may have to adapt these requirements to develop an acceptable monitoring plan for their property.

A monitoring plan must be developed in conjunction with the Voluntary Cleanup Plan. KDHE does not intend the monitoring plan to be a separate document; i.e., if the Plan contains remedial system designs, the associated remedial and post-remedial monitoring strategy should be included as a separate section within the plan. The Voluntary Cleanup Plan should simply present a monitoring plan if monitoring is the selected remedial approach. The purpose of the monitoring portion of the plan will be to present a monitoring strategy to achieve property-specific monitoring objectives. After monitoring has been conducted for some time, it may be appropriate to either increase or decrease monitoring points, frequencies, or analytes. The monitoring plan should, at a minimum, address the elements listed below:

2.1.7.1 Monitoring Objectives - An identification of the monitoring objectives for the specific property.

2.1.7.2 Monitoring Points - The points of the system to be monitored should be documented. This includes wells and/or remedial system operational parameters to be sampled.

2.1.7.3 Monitoring Schedule - Monitoring should be conducted at an adequate frequency to achieve monitoring objectives. Monitoring frequencies may vary for different groupings of sampling points at a property, for instance, system operation parameters might be sampled monthly while ground water wells are sampled only quarterly. A rationale for each monitoring frequency should be included.



2.1.7.4 Monitoring Parameters - Identify what will be monitored, for example:

- 1) Static water levels relative to mean sea level datum;
- 2) Contaminants to be analyzed for;
- 3) Anticipated levels of contaminants in media at sampling points; and,
- 4) Operational parameters for the remedial system(s) and their ramifications for system modifications.

2.1.7.5 Standard Operating Procedures (SOPs) - Sampling for monitoring should be carried out using SOPs in accordance with the Quality Assurance Project Plan (QAPP). Documentation of the strategy for maintaining the efficacy and representativeness of the monitoring program should be included. Laboratory analytical methods chosen for monitoring the contaminants of interest should also be included.

2.1.7.6 Monitoring Reports - A monitoring report must be submitted after each monitoring event to provide the results from monitoring and an evaluation of the effectiveness of the remediation and/or monitoring system. The proposed format and content for monitoring reports should be provided in this section of the Voluntary Cleanup Plan. Each monitoring report should contain the following information, as appropriate:

- 1) A discussion of the monitoring event, which should include property conditions, date and time, problems, deviations from approved procedures, a general description of monitoring work conducted, etc.;
- 2) Tabulated data such as static water levels, purging parameters, analytical results, and remedial system operational parameters. Tables should include the most recent data as well as all historical data for comparison;
- 3) Ground water potentiometric surface maps;
- 4) Contaminant concentration isopleth maps;



- 5) Supporting documentation such as laboratory reports and chain-of-custody forms; and,
- 6) A summary of monitoring results, a discussion of the effectiveness of remedial efforts by comparison of recent and past data, a discussion of any changes in contaminant concentrations or distribution, and other information to demonstrate compliance with the established monitoring objectives.

2.1.8 Investigative Derived Wastes and Other Wastes - The Plan must address how wastes generated from installation and operation of remedial systems will be characterized, treated, or disposed of.

3.0 Schedule

Provide a detailed schedule of proposed voluntary cleanup activities which specifically identifies the dates and time frames for implementing and completing the significant tasks of the cleanup.

4.0 References

Provide a comprehensive listing of resources referenced for preparation of the Voluntary Cleanup Plan.

5.0 Tables

Provide tables of information and data for quick reference within the Voluntary Cleanup Plan. Tabulated data such as field screening data, laboratory analytical data, water level data, and well completion data should be included.

6.0 Figures

At a minimum, the following figures must be included in the Voluntary Cleanup Plan. All figures must have a scale.

- 1) A figure based on a USGS 7.5' topographic quadrangle map depicting the property location;
- 2) A property map that depicts the entire property, buildings, and pertinent property features, surrounding properties, source areas, and potentially impacted receptors;
- 3) Any figures from previous investigation reports such as potentiometric surface maps or figures depicting known source areas and known extent of contamination; and,



- 4) Any figures necessary to illustrate remedial approaches, such as a figure depicting areas to be excavated accompanied by a figure to depict verification sampling locations, etc.

7.0 Appendix A - Quality Assurance Project Plan

A Quality Assurance Project Plan (QAPP) must be developed to describe the policy, organization, functional activities, and quality control/quality assurance protocols necessary to achieve the level of quality of data required for its intended use. If KDHE approved the Voluntary Cleanup Investigation Work Plan and its required QAPP, reference to the VCI Work Plan QAPP, as appropriate, is acceptable. The QAPP must contain the following information:

- 7.1 Key Personnel - Key personnel or organizations that are necessary for each activity during the voluntary cleanup, along with their responsibilities, must be identified. (This information may be presented in a table).
- 7.2 Quality Assurance Objectives for Data - The degree of accuracy of sample analysis and how this degree of accuracy will be achieved must be identified. Also within this section, the numbers and types of QA/QC samples such as trip blanks, equipment blanks, and replicates and the frequency at which they will be collected must be identified.
- 7.3 Sample Custody - How chain-of-custody will be maintained for samples collected for laboratory analysis must be described.
- 7.4 Analytical Procedures - Laboratory methods to be used for analysis of samples must be specified.
- 7.5 Laboratory QA/QC - Analysis must be completed by an environmental laboratory certified by the Kansas Health and Environmental Laboratory. Such a laboratory should provide a description of the internal QA/QC program to be followed by the laboratory. This information should be included in the QAPP.
- 7.6 Data Validation and Reporting - A description of how laboratory results will be validated should be included here. This describes how data is reviewed after being received from the laboratory to determine whether QA/QC protocol goals have been met. The data validation summary must include sufficient detail to allow KDHE to verify that data has been properly validated. The summary must address the data validation process, including discussion of results from analysis of replicates, laboratory or method blanks, matrix spikes and matrix spike duplicates, trip blanks, field blanks, equipment (rinsate) blanks, and any other QA/QC samples. The discussion should identify how deviations in the QA/QC sample results may affect the usability or interpretation of project sample results.



SECTION 13

8.0 Appendix B - Field Sampling Plan

The Field Sampling Plan should describe field activity, remediation program sampling, or monitoring sampling in detail and should consist of the following sections.

- 8.1 Sampling Objectives - Describe the specific objectives of each sampling effort relative to the intended use of the data; e.g., for field screening of soil samples collected while drilling, indicate the objective of the soil sampling and how the field screening data will be used. Alternatively, field screening as part of an excavation remedial effort might be conducted to determine when verification samples should be collected.
- 8.2 Sampling Locations and Frequency - Define what, when, and where samples will be collected. This should include samples for field screening and samples for laboratory analysis relative to all media being sampled.
- 8.3 Sampling Equipment and Procedures - Define how samples will be collected. This should contain or refer to sampling SOPs, or otherwise describe the sampling process. Any equipment used should be identified and described. Sampling QA/QC procedures such as decontamination procedures, should be described.
- 8.4 Sample Handling and Analysis - Describe sample handling tools, containers, preservation methods, shipping requirements, holding times, and chain-of-custody procedures.

9.0 Appendix C - Health and Safety Plan

A Site Health and Safety Plan consistent with OSHA requirements must be included with the Voluntary Cleanup Plan. This can be similar to the Health and Safety Plan required for the Voluntary Cleanup Investigation Work Plan.



VOLUNTARY CLEANUP REPORT

Scope of Work

1.0 Introduction

- 1.1 Property Information - Briefly summarize information about the property, including the property name, location, and general history relative to the Voluntary Cleanup and Property Redevelopment Program, including dates of voluntary actions such as submission and approval or execution of the agreements, cleanup investigations, cleanup plans, etc. Present a brief discussion of why cleanup or monitoring was necessary for the property, including the identification of contaminants of concern, concentrations, actual or potential receptors, etc.
- 1.2 Cleanup Objectives - Summarize the cleanup objectives selected in the Voluntary Cleanup Plan as approved by KDHE.

2.0 Documentation/Completion of Cleanup

The following is a general outline of the type of information necessary to document that voluntary cleanup objectives contained in the Voluntary Cleanup Plan have been achieved. The information provided in this document should clearly demonstrate that the cleanup completion criteria have been met. The information contained in the Voluntary Cleanup Report must be sufficient for KDHE to justify proceeding to the verification sampling stage of final closure. Reference should be made to previous VCPRP documents, when appropriate. When analytical data is included to support termination of the cleanup effort, the results of all sampling in the time period required for monitoring in the Voluntary Cleanup Plan should be included; i.e., if three years of quarterly sampling were required, include all three years of data in this document.

- 2.1 Soil Contamination - Provide an overview of cleanup activities implemented to address soil contamination. Analytical data, including both field screening and laboratory results, should be tabulated and included in the "Tables" section. Supporting figures should be referenced in the text and provided in the "Figures" section. The type of information to be provided in this section includes, but is not limited to:
 - 1) Total volumes of soil excavated, treated, and/or disposed of;
 - 2) Reference to a figure showing locations of soil excavation;
 - 3) A discussion of field screening and/or laboratory analytical results from sampling which verify that cleanup levels were achieved, or any other analytical work conducted as part of the remedial implementation;



SECTION 13

- 4) A discussion of results from implementation of other types of soil remediation, such as soil venting, bio-venting, etc.;
- 5) Analytical results which demonstrate cleanup levels have been achieved, such as samples from confirmatory soil borings conducted after soil venting is considered complete, etc.; and,
- 6) Other information as appropriate for the implemented remediation to verify that cleanup levels have been achieved.

2.2 Ground/Surface Water Contamination - Information requested in this section should be provided for any voluntary cleanup where ground water or surface water monitoring was conducted, or where monitoring was conducted in lieu of remediation. The information to be submitted includes, but is not limited to:

- 1) Total volumes of water diverted, treated, and/or disposed of;
- 2) Reference to a figure showing monitoring locations;
- 3) A discussion of field screening and/or laboratory analytical results from sampling which demonstrate that cleanup levels were achieved, or any other analytical work conducted as part of the cleanup implementation;
- 4) A discussion of the property setting and physical characteristics (such as hydrogeology, ground water flow direction, etc.) which when considered with the analytical data, support that cleanup objectives have been achieved;
- 5) Volumes of contaminants removed during the remediation; and,
- 6) Other information necessary for KDHE to verify that cleanup levels have been achieved.

3.0 Summary and Conclusions

Provide a summary of the overall voluntary cleanup effort and a brief statement of conclusions. The summary should clearly demonstrate why a No Further Action determination should be made for this property.

4.0 Tables

Provide tables of information, such as field screening and/or laboratory data, as appropriate, to demonstrate that cleanup objectives have been achieved.



5.0 Figures

Figures should be included to illustrate key issues relative to the voluntary cleanup. Potential figures to be included are:

- 1) A figure based on a USGS 7.5' topographic quadrangle depicting the property location;
- 2) A property map that depicts the entire property, buildings, and pertinent property features, surrounding properties, source areas, and potentially impacted receptors;
- 3) Figures to depict remediation related features such as areas excavated, actual locations of verification sampling, etc.;
- 4) Figures to depict post-remedial property conditions such as contaminant concentrations isopleths, water table maps, etc.; and,
- 5) Any figures necessary to illustrate other key aspects of the property-specific voluntary remediation or monitoring.

6.0 Appendices

Attach appendices to the Voluntary Cleanup Report to provide specific information about the cleanup, as necessary. Appendices to be provided include;

- 1) An appendix containing laboratory reports and QA/QC information - this would pertain to analyses for which such supporting documentation has not been previously provided. Examples would include supporting documentation for verification sampling conducted as part of contaminated soil excavation, treatment, and/or disposal, or the latest round of ground water sampling, etc.; and,
- 2) Although not required, photographs of key activities conducted during the voluntary cleanup could provide additional support for a No Further Action determination.



SECTION 13

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

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SECTION 14

RISK-BASED STANDARDS FOR KANSAS (RSK)/DETERMINING CLEANUP OBJECTIVES





RISK-BASED STANDARDS FOR KANSAS (RSK) AND DETERMINING SITE-SPECIFIC CLEANUP OBJECTIVES

Risk-based Standards for Kansas

KDHE published the first Risk-based Standards (RSK) Manual on March 24, 1999. Work on development of the RSK guidance was initiated for the Voluntary Cleanup and Property Redevelopment Program (VCPRP) in response to K.S.A. 65-34,167, which provides for the development of risk-based cleanup standards, and K.A.R. 28-71-11, the regulation that establishes the tiered-approach framework for developing the actual risk-based cleanup objectives. After developing the RSK guidance for the VCPRP, the concept was adopted for the entire Bureau of Environmental Remediation and the RSK Manual was intended to apply Bureau-wide, accordingly. The RSK Manual was included as Section 14 in the first VCPRP Manual; however, because the RSK manual will need to be modified more often than the VCPRP Manual, the current VCPRP Manual does not contain a version of the RSK Manual. The most recent version of the RSK Manual (at any given time) can be accessed via the internet on KDHE's Remedial Section web page (http://www.kdhe.state.ks.us/remedial/rsk_manual_page.htm).

The RSK guidance establishes a tiered-approach process for determining cleanup objectives at a property and is intended only for use on projects being conducted with KDHE oversight. The tiers include: Tier 1, establishing background concentrations for contaminants (primarily naturally occurring contaminants such as inorganic compounds and metals) and comparing site-specific contaminant values to background; Tier 2, using RSK-derived "off-the-shelf" values for comparison to contaminant concentrations; and, Tier 3, a more open-ended category to allow for alternative methods of calculating site-specific cleanup objectives when appropriate. The RSK guidance is designed for development of site-specific cleanup objectives for residential and non-residential land use settings. Plausible exposure pathways are considered including exposures to contamination in surface soil, consumption of contaminated ground water, and the "soil to groundwater pathway" which addresses the potential migration of contamination to ground water. The RSK Manual provides detailed explanation of how the guidance has been developed and how it can be used.

Based on accumulated experience with application of the RSK guidance to VCPRP projects, the following issues are noteworthy:

- Appendix A of the RSK Manual presents tabulated Tier 2 cleanup objectives for over 170 of the more common contaminants that were calculated based on the RSK process. The fact that an identified contaminant at a property is not included in the Tier 2 Table does not imply that the contaminant is not of concern. The list of Tier 2 values is provided for convenience and is not totally inclusive of all contaminants to be regulated. The actual guidance is the **procedure** for calculating cleanup objectives which is followed for not-so-common contaminants if the necessary data (e.g., toxicity data, physico-chemical data, etc.) is available. The VCPRP has and will continue to calculate Tier 2 values for contaminants not yet included in Appendix A.



- Tier 2 values are cleanup objectives, not delineation targets. For additional discussion of what this means, refer to Voluntary Cleanup Investigation (VCI) Miscellaneous Information, Delineation of Contamination, located in Section 9 of this manual.
- The VCPRP generally uses the Tier 2 Residential values for decision-making purposes following completion of investigation activities. For example, following a VCI, if no contamination is identified in excess of Tier 2 residential values, the property may receive a No Further Action Determination as opposed to progressing to cleanup or monitoring.
- When considering application of Tier 2 values, it must be kept in mind that Tier 2 values are compound specific and do not consider cumulative risk from multiple contaminants present.
- RSK guidance does not currently address vapor intrusion/indoor air exposure pathways; however, the department is currently developing guidance that will be included in future versions of the RSK Manual.
- Most programs within the Bureau of Environmental Remediation have adopted the Tier 2 values as default cleanup objectives; however, options for calculating site-specific cleanup objectives under Tier 3 can vary from program to program. For the VCPRP, the Tier 3 process cannot include conducting a baseline risk assessment as might be allowed for other programs. The Tier 3 process for the VCPRP can include using RSK guidance to calculate pathway-specific cleanup objectives by substituting site-specific parameters for default values as identified in the RSK Manual. The VCPRP Tier 3 can also include methods to assist in determining cleanup objectives such as modeling, and other unique approaches as approved on a project-specific basis by the VCPRP.

Determination of Cleanup Objectives

The RSK guidance establishes the procedure for developing site-specific risk-based cleanup objectives in terms of contaminant concentrations in specific media for various land use settings. For properties that must progress to the cleanup phase based on identified contamination, many other factors and options exist that should be considered in developing cleanup alternatives; i.e., the cleanup objectives are the targeted contaminant concentrations to be achieved through cleanup to receive a No Further Action determination while the cleanup alternatives are the strategies to achieve the objectives. The cleanup objectives should be established prior to, and as a basis for, developing cleanup alternatives which would typically take place during the preparation of a Voluntary Cleanup Proposal (see Section 13).

The voluntary party will have numerous options available in terms of cleanup strategies that can be approved by KDHE and that will result in a No Further Action (NFA) determination for a property. It should not be interpreted that every VCPRP project will require removal or treatment of impacted media until RSK values are achieved, as complete cleanup is not always technically and economically



feasible. As new guidance and policy are developed, the types of cleanup approaches that may be approved by KDHE may change.

For example, in Kansas, the default assumption is that any ground water encountered beneath a property is potable and deserves the ultimate protection; RSK Tier 2 ground water values are applicable and cannot be modified if the Tier 2 value is based on a Maximum Contaminant Level (MCL). Considering that there are areas in Kansas where ground water is not potable because of elevated levels of naturally occurring inorganic constituents and, in other areas shallow, perched ground water may be present but has not and would likely not be capable of delivering sustainable yield to wells, applying ground water standards based on MCLs or even considering applying ground water pathway RSK values may be overly conservative. In May 2004, the Bureau of Environmental Remediation developed the policy, BER-RS-045, to define conditions where it would be allowable to eliminate application of RSK ground water pathways based on naturally poor quality or extremely low yield to wells.

Another significant event that affects development of cleanup alternatives is the Environmental Use Control (EUC) legislation that became effective July 1, 2003. EUCs are essentially institutional controls that were already allowed to be included as components of cleanup alternatives in accordance with VCPRP regulation. The EUC legislation affects cleanup considerations in that if contamination in excess of unrestricted use levels (RSK Tier 2 **residential** levels) is to be left in place or allowed to remain on a property, an EUC would need to be applied to the property before the property could receive an NFA. Alternatively, EUCs can facilitate conditional NFAs as they can include long term monitoring provisions that could allow an NFA to be provided for a property earlier, allowing the longer term, extended frequency monitoring to be performed as part of the EUC. EUCs are discussed in more detail in Section 19.

Again, there are usually several cleanup alternatives for a given contamination scenario that could be accepted by the VCPRP. When a property is to proceed into cleanup, it would behoove the voluntary party to communicate with the VCPRP project manager and clearly identify options that could be supported by the VCPRP.

SECTION 15

NOTICE

OF

PUBLIC

PARTICIPATION





NOTICE OF PUBLIC PARTICIPATION

When a Voluntary Cleanup Plan has been accepted by KDHE, a public notice and comment period is required by law. KDHE will consult with the applicant and then publish a notice in a local newspaper of general circulation in the area affected. This notice may be a displayed advertisement or a legal notice. In addition to the published notice, KDHE may send a direct notice to any other appropriate entities, including units of local government. The public may request a copy of the Voluntary Cleanup Plan and send comments to KDHE. The public comment period must extend at least 15 days from the date the notice was published. KDHE will evaluate public interest at the end of the comment period and may schedule a public meeting or the voluntary party may also request a public meeting. Advance notice of the public information meeting will be given to the local media and local governments. At the public meeting, KDHE will provide the public with information about relevant voluntary cleanup activities at the property and will invite public comment. Upon completion of the public notification and participation process, a final determination to approve or disapprove the Voluntary Cleanup Plan will be made by KDHE. An example of a public notice that might appear in a local newspaper is given below:

PUBLIC NOTICE

The Kansas Department of Health and Environment (KDHE) is requesting public comment on the department's preferred cleanup alternative under the Kansas Voluntary Cleanup and Property Redevelopment Program to address environmental concerns at the Wicked Witch's Plant property located approximately four miles west of Emerald City, Kansas. A copy of the proposed Voluntary Cleanup Plan is available to anyone upon request.

Written public comments on the Voluntary Cleanup Plan will be accepted by KDHE during a 15-day public comment period between May 1 and May 15, 2005. (If a public meeting is to be held, the date, time and place will be indicated. Meetings will generally be held in the county where the subject property is located.)

KDHE has not given final approval to the Voluntary Cleanup Plan for the Wicked Witch's Plant property. KDHE will consider all public comments received or postmarked prior to the comment deadline in developing a final Voluntary Cleanup Plan for the property. Copies of the proposed Voluntary Cleanup Plan may be obtained between 8:00 a.m. and 5:00 p.m. from:

Kansas Department of Health and Environment
Bureau of Environmental Remediation
Remedial Section
Curtis State Office Building, Suite 410
Topeka, Kansas 66612-1367
CONTACT: VCPRP Coordinator
(785) 296-1665, FAX (785) 296-7030

Copies will also be available for the comment period during normal hours at the:

West County Public Library
123 West Yellow Brick Road
Ozburg, Kansas

SECTION 16

VERIFICATION PROCEDURES





VERIFICATION PROCEDURES

The KDHE-approved Voluntary Cleanup Plan will contain a section describing the cleanup target levels for each contaminant impacting the property. These cleanup target levels will be based on the intended future use of the site and risk-based considerations. All KDHE-approved cleanup target levels will be protective of human health and the environment. The Voluntary Cleanup Plan will also describe the monitoring frequency requirements to be implemented during the remediation process, and the sampling procedures to verify that cleanup is complete. Monitoring contaminant levels during remediation can indicate when adjustments to the remediation system are required or when a remediation system has achieved the KDHE-approved cleanup target levels.

When the remediation procedures implemented at the property have reduced contamination to or below the cleanup target levels, the voluntary party will notify KDHE in writing. At that time, the verification procedures contained in the Voluntary Cleanup Plan will be implemented. Verification sampling will normally mirror the types and variety of sampling used to characterize and monitor contamination at the property. Generally, verification sampling will be carried out by the voluntary party's consultant in cooperation with KDHE staff. Environmental sampling will be directed towards the goal of determining the levels of contamination remaining in the contaminated media to demonstrate that the cleanup target levels have been achieved. To provide appropriate levels of QA/QC in the verification process, a portion of the samples collected will be split by KDHE.

Analytical results of the verification sampling will be compared with the cleanup target levels and a determination will be made as to whether the cleanup is complete. If the cleanup target levels have been met, KDHE may issue a No Further Action determination with or without a stipulation of future monitoring. If the cleanup target levels have not been achieved after a reasonable time, the cleanup methodology may be modified or an alternative cleanup approach may need to be implemented.

SECTION 17

SAMPLE

OF

No

FURTHER

ACTION

DETERMINATION

LETTERS





SAMPLE OF NO FURTHER ACTION DETERMINATION LETTERS

CONTAMINANTS IDENTIFIED AT PROPERTY DETERMINED TO BE PRESENT AT INSIGNIFICANT LEVELS

Date @

Voluntary Party @
Address @

RE: NO FURTHER ACTION DETERMINATION FOR SUBJECT PROPERTY

Name of Voluntary Party:
Legal Description of Property:
Property Location:

Voluntary Agreement No. _____

Dear (Name):

The Kansas Department of Health and Environment (KDHE) has completed its review of the available documents as of (date) for the subject property. Based on the information presented in the documents, (contaminant) in soil and/or ground water was identified at the subject property. The attached determination summary identifies the nature and status of the contamination detected.

KDHE's evaluation of the available documents for the subject property indicates that (describe contaminants tested) contamination impacting the subject property is present at levels that do not exceed the KDHE approved risk-based cleanup levels. KDHE has determined that contamination at the subject property does not pose a significant risk to human health or the environment. Therefore, pursuant to Kansas Statutes Annotated, K.S.A. 65-34,161 *et seq.*, KDHE declares that No Further Action is necessary at the subject property. This No Further Action determination is issued to (Voluntary Party) and extends to successors and assigns of the subject property. This determination is conditioned upon (Voluntary Party) recording in the office of the Register of Deeds in and for (County), KDHE's determination summary describing the contamination remaining at the subject property, the enclosed legal map showing property boundaries and this letter containing KDHE's No Further Action determination. **An affidavit (form enclosed) indicating that the enclosures have been attached to the property deed must be returned to KDHE prior to termination of the voluntary agreement.**

KDHE's No Further Action determination applies only to the subject property as identified on the attached map and is based exclusively on information provided to KDHE through (date). This determination pertains only to the identified known conditions on the subject property and does not account for activities that may be conducted at the subject property which could cause future releases of contaminants.

If you have any questions concerning KDHE's determination for No Further Action, please contact the Project Manager, (Name) at (telephone number) or legal counsel, (Name) at (telephone number).

Sincerely,

Secretary,
Kansas Department of Health and Environment

Attachments: KDHE No Further Action Determination Summary
Legal map showing property boundaries
Affidavit form



KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

CONTAMINANTS IDENTIFIED AT PROPERTY CLEANED UP TO LEVELS THAT MEET ESTABLISHED REMEDIAL STANDARDS

Date @

Voluntary Party @

Address @

RE: NO FURTHER ACTION DETERMINATION FOR SUBJECT PROPERTY

Name of Voluntary Party:

Legal Description of Property:

Property Location:

Voluntary Agreement No. _____

Dear (Name):

The Kansas Department of Health and Environment (KDHE) has completed its review of the available documents as of (date) for the subject property. Based on the information presented in the documents, (contaminant) in soil and/or ground water was identified at the subject property. The attached determination summary identifies the nature and status of the contamination detected.

The KDHE has evaluated the available documents for the subject property, completed verification sampling and has determined that (contaminant) impacting the subject property has been addressed in accordance with the KDHE approved Voluntary Cleanup Plan. The KDHE hereby provides official notice that all requirements established by the Voluntary Cleanup and Property Redevelopment Program related to contamination at the subject property have been satisfactorily addressed. Therefore, pursuant to Kansas Statutes Annotated, K.S.A. 65-34,161 *et seq.*, KDHE declares that No Further Action is necessary at the subject property. This No Further Action determination is issued to (Voluntary Party) and extends to its successors and assigns of the subject property. This determination is conditioned upon (Voluntary Party) recording in the office of the Register of Deeds in and for (County), KDHE's determination summary describing any contamination that may be remaining at the subject property, the enclosed legal map showing property boundaries and this letter containing KDHE's No Further Action determination. **An affidavit (form enclosed) indicating that the enclosures have been attached to the property deed must be returned to KDHE prior to termination of the voluntary agreement.**

KDHE's No Further Action determination applies only to the subject property as identified on the attached map and is based exclusively on information provided to KDHE through (date). This determination pertains only to the identified known conditions on the subject property and does not account for activities that may be conducted at the subject property which could cause future releases of contaminants.

If you have any questions concerning KDHE's determination for No Further Action, please contact the Project Manager, (Name) at (telephone number) or legal counsel, (Name) at (telephone number).

Sincerely,

Secretary,
Kansas Department of Health and Environment

Attachments: KDHE No Further Action Determination Summary
 Legal map showing property boundaries
 Affidavit form



KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

CONTAMINANTS IDENTIFIED AT PROPERTY ADDRESSED IN ACCORDANCE WITH THE CLEANUP PLAN AND INCLUDES SPECIFIED CONTINGENCIES

Date @

Voluntary Party @
Address @

RE: NO FURTHER ACTION DETERMINATION FOR SUBJECT PROPERTY

Name of Voluntary Party:
Legal Description of Property:
Property Location:

Voluntary Agreement No. _____

Dear (Name):

The Kansas Department of Health and Environment (KDHE) has completed its review of the available documents as of (date) for the subject property. Based on the information presented in the documents, (contaminant) in soil and/or ground water was identified at the subject property. The attached determination summary identifies the nature and status of the contamination detected.

The KDHE has evaluated the available documents for the subject property, completed verification sampling and has determined that (contaminant) impacting the subject property has been addressed in accordance with the KDHE approved Voluntary Cleanup Plan. The KDHE hereby provides official notice that all requirements established by the Voluntary Cleanup and Property Redevelopment Program related to contamination at the subject property have been satisfactorily addressed. Therefore, pursuant to Kansas Statutes Annotated, K.S.A. 65-34,161 *et seq.*, KDHE declares that no further affirmative remedial action is necessary at the subject property with the following conditions, if required: (identify contingent conditions; i.e. environmental use controls, long term monitoring, etc.). This No Further Action determination, including specified conditions, is issued to (Voluntary Party) and extends to its successors and assigns of the subject property. This determination is conditioned upon (Voluntary Party) recording in the office of the Register of Deeds in and for (County), KDHE's determination summary describing any contamination that may be remaining at the subject property, the enclosed legal map showing property boundaries and this letter containing KDHE's No Further Action determination. **An affidavit (form enclosed) indicating that the enclosures have been attached to the property deed must be returned to KDHE prior to termination of the voluntary agreement.**

KDHE's No Further Action determination applies only to the subject property as identified on the attached map and is based exclusively on information provided to KDHE through (date). This determination pertains only to the identified known conditions on the subject property and does not account for activities that may be conducted at the subject property which could cause future releases of contaminants.

If you have any questions concerning KDHE's determination for No Further Action, please contact the Project Manager, (Name) at (telephone number) or legal counsel, (Name) at (telephone number).

Sincerely,

Secretary
Kansas Department of Health and Environment

Attachments: KDHE No Further Action Determination Summary
Legal map showing property boundaries
Affidavit form



SECTION 17

CONTAMINANTS IDENTIFIED AT PROPERTY DETERMINED TO EMANATE
FROM AN OFF-SITE SOURCE

Date @

Voluntary Party @

Address @

RE: NO FURTHER ACTION DETERMINATION FOR SUBJECT PROPERTY

Name of Voluntary Party:

Legal Description of Property:

Property Location:

Voluntary Agreement No. _____

Dear (Name):

The Kansas Department of Health and Environment (KDHE) has completed its review of the available documents as of (date) for the subject property. Based on the information presented in the documents, (contaminant) in soil and/or ground water was identified at the subject property. The attached determination summary identifies the nature and status of the contamination detected.

KDHE's evaluation of the available documents for the subject property indicates that (describe contaminants tested) contamination impacting the subject property is associated with a release from an off-site source. The responsible party for the off-site source of contamination is currently under an agreement with KDHE, (agreement name and number), to address the extent of contamination impacting the subject property. Therefore, pursuant to Kansas Statutes Annotated, K.S.A. 65-34,169 (b)(1), KDHE declares that No Further Action is necessary at the subject property. This No Further Action determination is issued to (Voluntary Party) and extends to successors and assigns who are not otherwise responsible parties. This determination is conditioned upon the agreement of (Voluntary Party) and successive property owners, to fully cooperate and allow reasonable access to the subject property for any future investigation or remedial action that may be taken in accordance with (agreement name and number). This determination is also conditioned upon (Voluntary Party) recording in the office of the Register of Deeds in and for (County), KDHE's determination summary describing the contamination remaining at the subject property, the enclosed legal map showing property boundaries and this letter containing KDHE's No Further Action determination. **An affidavit (form enclosed) indicating that the enclosures have been attached to the property deed must be returned to KDHE prior to termination of the voluntary agreement.**

KDHE's No Further Action determination applies only to the subject property as identified on the attached map and is based exclusively on information provided to KDHE through (date). This determination pertains only to the identified known conditions on the subject property and does not account for activities that may be conducted at the subject property which could cause future releases of contaminants.

If you have any questions concerning KDHE's determination for No Further Action, please contact the Project Manager, (Name) at (telephone number) or legal counsel, (Name) at (telephone number).

Sincerely,

Secretary
Kansas Department of Health and Environment

Attachments: KDHE No Further Action Determination Summary
Legal map showing property boundaries
Affidavit form



NO CONTAMINATION IMPACTING PROPERTY

Date @

Voluntary Party @
Address @

RE: NO FURTHER ACTION DETERMINATION FOR SUBJECT PROPERTY

Name of Voluntary Party:
Legal Description of Property:
Property Location:

Voluntary Agreement No. _____

Dear (Name):

The Kansas Department of Health and Environment (KDHE) has completed its review of the available documents as of (date) for the subject property. Based on the information presented in the documents, (contaminant) in soil and/or ground water was identified at the subject property. The attached determination summary identifies the nature and status of the contamination detected.

The KDHE has evaluated the available documents for the subject property and has determined that there is no (describe contaminants tested) contamination impacting the subject property. Therefore, pursuant to Kansas Statutes Annotated, K.S.A. 65-34,161 *et seq.*, KDHE declares that No Further Action is necessary at the subject property. This No Further Action determination is issued to (Voluntary Party) and extends to its successors and assigns of the subject property. This determination is conditioned upon (Voluntary Party) recording in the office of the Register of Deeds in and for (County), KDHE's determination summary presenting investigation results and subsequent conclusions regarding potential contaminant impact at the subject property, the enclosed legal map showing property boundaries and this letter containing KDHE's No Further Action determination. **An affidavit (form enclosed) indicating that the enclosures have been attached to the property deed must be returned to KDHE prior to termination of the voluntary agreement.**

KDHE's No Further Action determination applies only to the subject property as identified on the attached map and is based exclusively on information provided to KDHE through (date). This determination pertains only to the identified known conditions on the subject property and does not account for activities that may be conducted at the subject property which could cause future releases of contaminants.

If you have any questions concerning KDHE's determination for No Further Action, please contact the Project Manager, (Name) at (telephone number) or legal counsel, (Name) at (telephone number).

Sincerely,

Secretary,
Kansas Department of Health and Environment

Attachments: KDHE No Further Action Determination Summary
Legal map showing property boundaries
Affidavit form

SECTION 18

KDHE's

BROWNFIELDS

PROGRAM





SECTION 18

KDHE's BROWNFIELDS PROGRAM

The VCPRP establishes a streamlined program which, through its voluntary nature, provides benefits to property owners, real estate purchasers and developers and lending institutions to facilitate the buying, selling and redevelopment of contaminated properties. Redevelopment of environmentally impacted properties is also encouraged and facilitated through federal and state "Brownfields" programs. Brownfields and Voluntary Cleanup Programs are typically viewed to be complimentary as, in certain cases, property investigations may be conducted through a Brownfields program with expectations that cleanups of these properties would subsequently be achieved through a Voluntary Cleanup program. KDHE has developed a Brownfields program and already in a few cases, assessments of properties have been completed through KDHE's Brownfields program with subsequent cleanup and closure achieved through the VCPRP.



Brownfields Targeted Assessments can provide a means to evaluate potential environmental liabilities for municipalities in their redevelopment pursuits even where no specific environmental concern has been identified. The City of Derby, Kansas requested that KDHE assess this vacant land for potential redevelopment.

Municipalities, redevelopment organizations, and not-for-profit organizations involved with redevelopment projects in Kansas are eligible to apply for assistance through KDHE's Brownfields program. Every city and county, in both rural and urban areas, has abandoned, underutilized, and potentially contaminated properties. KDHE currently has programs available to assist with the redevelopment of brownfields.

KDHE's Brownfields Program includes:

- **Brownfields Targeted Assessments**
- **Technical Assistance to Communities**

What are Brownfields?

The term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Often the potential liability associated with contamination complicates business development, property transactions or expansion on the property. By investigating and cleaning up a brownfields property and taking care of the site's possible health or environmental risks, communities can use local land again to produce jobs, increase the tax base or to add other benefits such as creating parks or residential areas.

When available land for new development is expensive and scarce, brownfields properties can offer significant benefits. For example, brownfields properties often:

- are in desirable locations such as near city centers, in waterfront areas, near transportation access, near utilities and near a ready pool of workers or patrons nearby;
- have facilities that can be reused such as buildings, docks, transportation infrastructure, etc. These may allow reduced costs compared to building new facilities;
- cost less to purchase;
- may be eligible for benefits or incentives such as state and/or federal tax programs and financial assistance; and,
- provide a great value to the community by supporting commercial and/or industrial jobs and improving the tax base or, when appropriate, recreational or leisure opportunities, retail development, increased tourism, and by preserving greenfields from development.

KDHE's Brownfields Targeted Assessments

KDHE, under a Cooperative Agreement with the USEPA, will conduct Brownfield Targeted Site Assessments (BTA) at the request of local units of government, land clearance authorities, regional councils, redevelopment agencies, tribal organizations, not-for-profit organizations, and other quasi-governmental agencies across the state. Often, local governments have acquired contaminated properties through foreclosure for back taxes, land donations, or may already own property that they would like to sell for redevelopment. It is sometimes difficult for communities to find adequate funding to undertake requirements for "All Appropriate Inquiries"



A long history of industrial and manufacturing use had left an unknown environmental legacy at this property in Leavenworth, Kansas.



The Derby property was successfully redeveloped as a recreational facility.

(Phase I and Phase II Environmental Assessments or conducting Environmental Due Diligence) prior to redevelopment. The All Appropriate Inquiries types of environmental assessments and due diligence are typically required by lending institutions to identify any existing environmental liabilities, which can translate to financial liabilities, prior to releasing funds for property transactions. The BTA Program provides funding and technical assistance to assist communities in assessing properties. Often, it is the unknown in terms of environment liability that dissuades developers from considering properties, not actual contamination. Once communities can demonstrate a particular property is viable for redevelopment, these communities can then encourage redevelopment activities on these unused pieces of property.



SECTION 18

What Does A Brownfield Targeted Assessment Include?

A Brownfields Targeted Assessment currently includes:

- a screening (Phase I) assessment, including a background and historical investigation and a preliminary site inspection.
- a full (Phase II) site assessment, including sampling activities to identify the types and concentrations of contaminants and the areas of contamination that may need to be cleaned up.

The EPA has proposed Federal Regulations (40 CFR Part 312 - not yet final) establishing standards and practices for “All Appropriate Inquiries (AAI)”. These proposed federal regulations, as drafted, define and include specific standards for the environmental assessment and environmental due diligence activities for AAI. Following the AAI process may provide a property purchaser some relief or protection from federal environmental liability should an environmental problem be found after a property transaction. For example, should a purchaser of a property satisfy AAI standards prior to purchase of a property and contamination of that property is found later, the purchaser should be able to easily demonstrate they did not know and should have no reason to know of the release of a hazardous substance (contamination) prior to the purchase which could alleviate concerns regarding federal liability. Once the “All Appropriate Inquiries” federal regulations become final, Brownfield Targeted Assessments will be designed to meet the AAI requirements.

KDHE’s program targets properties that: are abandoned or publicly owned; have low to moderate contamination; include issues of environmental justice; suffer from the stigma of liability; or have a prospective purchaser willing to buy and pay for the cleanup of the property, if needed.



Following KDHE's Brownfields Targeted Assessment and cleanup through the VCPRP, this property was developed as a cultural center for the community of Leavenworth.

Brownfields Technical Assistance to Communities

In addition to the Brownfields Targeted Assessment and Brownfields Cleanup Revolving Loan Fund Programs, KDHE can provide technical assistance to communities. Technical assistance may include:

- discussing results of environmental site assessments;
- determining the appropriate environmental programs for specific properties;
- review of EPA Brownfields grant applications;
- conducting brownfields workshops across the state to discuss brownfields opportunities within communities; and
- individual assistance for communities to discuss specific brownfields redevelopment issues.

For more information on KDHE's Brownfields Program please contact:

Brownfields Coordinator
 KDHE/BER
 1000 SW Jackson, Suite 410
 Topeka, Kansas 66612-1367
 Phone: (785) 291-3246
 FAX: (785) 296-7030



SECTION 18

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

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SECTION 19

KDHE's

ENVIRONMENTAL

USE

CONTROL

PROGRAM





KDHE's ENVIRONMENTAL USE CONTROL PROGRAM

Introduction

The Environmental Use Control Program was established by Kansas Statute (K.S.A. 65-1,221 to 65-1,235) on July 1, 2003. The purpose of this program is to provide a voluntary mechanism to assist existing state cleanup or remedial programs in addressing environmental contamination in a cost-effective manner that is protective of human health and the environment.

Environmental Use Controls (EUCs), also referred to as institutional controls, are a legal means of restricting or prohibiting human activity and property use to prevent or reduce exposure to contamination. Some examples of EUCs include: preventing disturbance of soil caps, covers, or berms; prohibiting the drilling of water wells for domestic or other purposes; restricting and/or providing notification during excavation on a property; restricting use of a property to only non-residential purposes; and restricting access to a property.

History and Purpose

On April 21, 2003, Governor Kathleen Sebelius signed House Bill 2247. This bill established the use of EUCs for property with environmental contamination above unrestricted (i.e., residential) use standards. The bill was developed by KDHE in coordination with a broad stakeholder committee representing state and local government, military interests, agricultural and petroleum industries, major utilities, railroads, and environmental special interest groups. The bill was introduced during the 2003 Legislative session and was subsequently passed by the House with a vote count of 111 to 12, and by the Senate with a vote count of 34 to 0. House Bill 2247, known as the Environmental Use Control Act, became law on July 1, 2003. The following definition is provided in K.S.A. 65-1,222:



Due to the magnitude of impact and extent of contamination at some sites, decontamination may not be feasible or cost effective. An overwhelming volume of heavy metal contaminated waste is present at this former smelter site in Allen County.

“Environmental Use Control” means an institutional or administrative control, a restriction, prohibition or control of one or more uses of, or activities on, a specific property, as requested by the property owner at the time of issuance, to insure future protection of public health and the environment when environmental contamination which exceeds the department standards for unrestricted use remains on the property following the appropriate assessment and/or remedial activities as directed by the department pursuant to the



secretary's authority. For the purposes of this act, "environmental contamination" does not mean animal or process waste from a confined feeding facility as defined in K.S.A. 65-171d, and amendments thereto, livestock operations or the application of livestock waste for use as a plant nutrient. Any environmental use control created pursuant to this act runs with the property and is binding on the owner and subsequent owners, lessees, and other users of the land.

KDHE staff, with input from the stakeholder committee, drafted proposed regulations for the Environmental Use Control Program. While the promulgated statute created the EUC Act and provides sufficient detail to implement the EUC program, the regulations will provide additional definition for some aspects of the program such as the application process, financial assurance, and long term care agreements. As of February 2005, the draft regulations are in the concurrence process. They are likely to be finalized as K.A.R. 28-73-1 through 28-73-7 by the end of 2005; however, the EUC program is fully operational at this time.



Stabilization and capping of smelter waste will be protective of human health and the environment. Environmental Use Controls on this property ensure proper maintenance of the cap, facilitate KDHE inspections, and prevent future property uses that may result in inadvertent exposure to waste remaining onsite.

The purpose of the EUC Act is to allow a property owner to voluntarily restrict the use of their property in order to mitigate risk posed by residual environmental contamination, at concentrations exceeding KDHE standards for unrestricted residential use, remaining on the property after appropriate assessment and or remedial activities. EUCs provide property owners and developers with a method of potentially limiting or reducing the amount of remediation performed at a site while still remaining protective of human health and the environment. This is accomplished by establishing limits on the future use of the property. Limiting the future use allows the remedial standards for that property to be based on the actual future use of the property, rather than requiring cleanup standards to be based on unrestricted, residential use. EUCs can be an effective component of the remedial alternative for sites where: 1) it is not technically or

economically feasible to remove residual contamination that exceeds unrestricted use standards; and 2) restricting access to or activities on the property is a viable option for reducing potential exposure to contamination. There are many impacted properties across Kansas where remediation to unrestricted use standards is not practicable due to a variety of technical or economic considerations. The risk from these impacted properties can be dramatically decreased or removed through the use of engineering controls and/or appropriate use restrictions to prevent or limit exposure to residual contamination.



SECTION 19

Benefits

KDHE anticipates several long term benefits from the EUC Act including: 1) increased protection of human health and the environment through tracking and enforcement of land use restrictions; 2) increased selection of more affordable remedies based on future land use; 3) redevelopment and beneficial reuse of previously contaminated property for industrial and commercial use; and 4) restoration of economic vitality in Kansas communities. The benefits of the EUC program will be realized by a wide spectrum of parties, including: the public, landowners, potential purchasers, construction or utility workers, and the local communities and government entities.

EUCs protect the public by making sure that restrictions, designed to prevent people from coming into contact with contamination, are enforced. Prior to the EUC Act, KDHE allowed some sites to be remediated to non-residential standards by requiring the company or landowner to place restrictions on the deed of the property; however, there was no formal means for monitoring these sites to ensure that the property was in compliance with the restrictions and no means of legally ensuring that subsequent property owners were adequately informed and compliant with the restrictions. This approach did not provide adequate management of potential risk in most cases and, subsequently, KDHE was less likely to approve non-residential clean-up standards. The EUC Act provides a mechanism for tracking and enforcing restrictions on property use, and in essence provides a safety net when cleanup standards contingent on restricted use of a property are approved by KDHE.



Engineered structures and caps should be designed to withstand the tests of time.

EUCs can be beneficial to landowners in several ways. EUCs may provide cost savings to land owners by restricting access or use of the property rather than remediating to unrestricted use standards. EUCs may also protect landowners by preventing damage to caps or engineered barriers by restricting activities in these areas, which can prevent costly repairs or additional remedial actions required to re-address the contamination. By providing a means for mitigating risk from residual contamination, EUCs may also reduce a landowner's environmental liability.

EUCs protect potential purchasers by disclosing contamination and restrictions on the property deed. These restrictions transfer with property ownership and are binding on all subsequent owners, lessees, and other users of the property. Once applied, EUCs cannot be removed from a deed without KDHE's approval; therefore, purchasers are protected from buying use-restricted property without prior knowledge of the environmental conditions.



Construction and utility workers are protected by EUCs that prohibit or require prior notification before excavating, moving soil, or penetrating a cap where residual contamination is left in place.

Documenting and tracking properties with EUCs will help protect local governmental entities interested in acquiring property by making them aware of environmental conditions or restrictions prior to acquiring it. By allowing landowners or companies to remediate to concentrations suitable for the future use of a property, the EUC program encourages redevelopment of previously blighted areas. This would potentially be beneficial for economic redevelopment and could ultimately result in an increased tax base for local communities and promote the creation of jobs.

Eligibility

The EUC program is a voluntary program, meaning that public and private entities may elect to participate in the program by submitting an application. EUCs are applicable and necessary at a site if residual contamination (i.e., contamination remaining on the property following clean-up) exceeds concentrations established by KDHE as acceptable for unrestricted or residential property use. A landowner/responsible party has the option of remediating residual contamination on their property to residential standards or applying for an EUC to leave the residual contamination in place.

To be eligible to receive an EUC, the site must be active (or has been active) in a KDHE program with oversight authority such as the VCPRP or the State Cooperative Program. While EUCs can be approved for an eligible site at any point during the investigative or remedial process, they must be applied as part of the overall approved clean-up plan. EUCs cannot be used as a default remedy in lieu of evaluating active remedial alternatives and are not to be used as a substitute for remedial actions that are otherwise technically and economically practicable. EUCs may be appropriate for a property if the clean-up objectives are based on or include: non-residential land use; protective structures (i.e., engineered barriers such as caps, berms, surface controls, etc.); or prohibiting activities on the property (i.e., no water wells, no excavation or trenching, etc.).

How EUCs Work

Contamination at a property can be cleaned up to residential standards to achieve closure, or EUCs may be used as part of the cleanup to allow closure conditioned upon restrictions that prevent exposure to residual contamination. Entities who elect to participate in the program will be subject to the promulgated statutes and the pertinent regulations when they are finalized. An EUC runs with the property and is binding on all subsequent owners, lessees, and other users of the property. EUCs can be applied to a property in perpetuity or for a specified term of years. If applied for a term, the landowner and KDHE will reassess the residual contamination on the property at the landowner's expense upon completion of that term. Based on this assessment, which may require collection and analysis of soil or ground water samples, KDHE will either determine a new duration term for the EUC or agree to terminate the EUC. Once applied, EUCs remain attached to the property deed until legally rescinded by KDHE. A property owner can elect to conduct additional investigative or remedial activities on their property after an EUC is in place in an attempt to remove or modify the



SECTION 19

EUC on their property. Coordination of such actions with KDHE is strongly recommended. An EUC shall be rescinded by KDHE if the property owner demonstrates to the department's satisfaction that the original risk to human health or the environment, which created the need for the control, is no longer present.

Application

An application to participate in the EUC program is included in this section and additional copies can be downloaded from the KDHE website at www.kdhe.state.ks.us/remedial/eucs.htm or requested by phone at 785-296-1935. The application for an EUC must be submitted by the property owner or the owner's authorized representative. Each application includes instructions for completing the forms and KDHE is available to answer questions concerning the application, if necessary. KDHE will process submitted applications within 60 days to determine if the property is eligible for the establishment of EUCs. There is no fee for submitting an application.



Waste repository caps should promote drainage and minimize erosion or abrasion of the final cover.

Categories

Using information submitted in the application and obtained from site files, KDHE will determine whether the property is eligible for the establishment of EUCs and, if so, whether the property will be classified as a Category 1, 2 or 3 property. Category determinations are based on the size of the property, the toxicity and mobility of the residual contamination left on site, and the necessary inspection frequency. The criteria used to establish and define each category is listed below:

Category 1:

- ≤ 5 acres in size
- Residual contamination has low toxicity and low mobility
- Minimal anticipated maintenance of protective structures
- Inspection frequency - once every 5 years

Category 2:

- Any size property
- Residual contamination has moderate toxicity and/or moderate mobility
- Limited anticipated maintenance of protective structures
- More complicated or costly inspections
- Inspection frequency - not more than one inspection per year

Category 3:

- Any size property, especially large tracts
- Residual contamination has moderate to high toxicity and/or moderate to high mobility
- Complicated or extensive maintenance or monitoring of protective structures
- Frequent or complicated site inspections anticipated
- Inspection frequency - one or more inspections per year
- Cost of inspections may be dependent on the future use of the property and the quality of maintenance of protective structures by the property owner

The following table is used for the purpose of defining toxicity with regards to determining whether a property will be classified as a Category 1, 2, or 3 property. Properties with both carcinogenic and non-carcinogenic compounds present will be classified by the more conservative category.

TOXICITY	CARCINOGENIC	NON-CARCINOGENIC
Low	> RSK Residential < RSK Non-Residential	> RSK Residential < RSK Non-Residential
Moderate	> RSK Non-Residential < 1×10^{-4} Risk	> Hazard Index = 1
High	> 1×10^{-4} Risk	> Hazard Index = 1

Contaminant mobility, for the purpose of determining property category, will be determined by the department on a case-by-case basis because there is too much variability to develop a template to cover all scenarios. Considerations will include, but are not limited to: the physical state or phase of the contamination, physico-chemical properties of the contamination, and the geology and hydrology of the property setting. For any property where ground water has been impacted by contamination or where ground water monitoring is required due to the potential for impacts, mobility will be classified as moderate or high.



This orphan site in Montgomery County, Kansas, the former Standard Asphalt & Rubber Company (SARCO) site, was heavily impacted by acidic sludge generated from asphalt refining in the early 1900s.

Costs

The landowner's cost for an EUC is based on the category designation assigned to it. Category 1 properties require a one-time payment of \$2,000 by the applicant to fund the life of the EUC. Category 2 properties require a one-time payment by the applicant, not to exceed \$10,000 to fund the life of the EUC. Costs for Category 3 properties can vary depending on nature of the EUC, monitoring and inspection frequencies, maintenance requirements for protective structures, etc.



SECTION 19

Category 3 properties will require a Long Term Care (LTC) Agreement to establish the costs for the EUC. The LTC Agreement will document the responsibilities of each party and include provisions to reimburse the department for costs that will be incurred by performing inspections, tracking of the property, and long term care. In some cases, KDHE may require the applicant to provide and maintain financial assurance for a Category 3 EUC based on the potential for long term maintenance costs of protective structures and the potential for release or migration of environmental contamination from the property in the future.

There are several acceptable methods for demonstrating financial assurance at a Category 3 property with EUCs, including: Environmental Insurance; a Guarantee; a Performance or other Surety Bond; an Irrevocable Letter of Credit; or Qualification as a Self-Insurer. Some of these methods will also require a standby trust. At the time of this printing, the guidance document discussing procedures for demonstrating Financial Assurance for EUC properties is being developed. KDHE anticipates that the final document will be generated by the end of 2005 in conjunction with the final EUC regulations.



The cleanup remedy involved stabilization of the sludge materials using cement kiln dust to immobilize the contaminant.

Implementation

Upon approval of an application, KDHE will generate an EUC Agreement (EUCA) that sets forth the restrictions, prohibitions, and limitations to be applied to the property. The agreement also describes the funding means and amount, the duration of the EUC, the monitoring, inspection, and maintenance requirements, and any other necessary terms and conditions of the EUC. Upon receipt of the executed EUCA from KDHE, the applicant must sign and notarize the document, and file the agreement with the County Register of Deeds in the county in which the property is located. The applicant must submit a notarized copy of the filed EUCA bearing the stamp or seal of the County Register of Deeds to KDHE within ninety days from certified receipt of the executed Agreement from KDHE.

The EUC funding for a Category 1 or 2 property, or the executed LTC Agreement and initial payment for a Category 3 property must also be submitted to KDHE within ninety days of receipt of the EUCA.



An EUCA is not effective until proper signing and recording of all necessary documents and submission of required funding to KDHE is complete.

Once the EUCA is finalized, KDHE will enter the pertinent information into the department's EUC tracking system. Inspections will be performed at the required frequency by the landowner and/or KDHE, as specified in the agreement. An inspection form documenting the conditions of the property shall be submitted to KDHE after each inspection. These inspection forms may be either property-specific or a standardized form generated by KDHE, depending on the level of detail necessary to adequately document property conditions. If the inspection reveals that the property is out of compliance with the terms of the EUC (i.e., required signage is removed, surface erosion of a soil cap, etc.), KDHE will request that the owner perform the necessary actions to return the property to compliance. The landowner shall submit documentation to KDHE recording all actions taken to correct the deficiencies. If the terms of the EUCA are not being implemented by the property owner, or the property presents a hazard to public health and the environment, KDHE may take such action as authorized by K.S.A. 65-1,229, including: 1) issuing an order directing the owner to correct any deficiencies and fully implement the terms of the EUCA, 2) issuing an order retracting the EUCA and requiring the owner to implement a remedial action at the property to attain clean-up standards for unrestricted or residential use of the property, or 3) for Category 3 sites, KDHE may commence an action enjoining acts or practices set forth in the agreement or request that the attorney general or appropriate district or county attorney commence such an action.



Controls established at the SARCO site include long term maintenance of the cap and restrictions on installation of water wells, subsurface excavation activities, and use of the property for residential purposes.

For additional information about the Environmental Use Control Program, please contact:

Christine Jump, Unit Chief
Post-Remediation-EUC Unit
Kansas Dept. Health and Environment
1000 SW Jackson Street, Suite 410
Topeka, Kansas 66612-1367
cjump@kdhe.state.ks.us

785-296-1935

or

Rick Bean, Section Chief
Remedial Section
Kansas Dept. Health and Environment
1000 SW Jackson Street, Suite 410
Topeka, Kansas 66612-1367
rbean@kdhe.state.ks.us

785-296-1675



SECTION 19

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM



KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT BUREAU OF ENVIRONMENTAL REMEDIATION



ENVIRONMENTAL USE CONTROL PROGRAM

--APPLICATION TO PARTICIPATE--

INTRODUCTION

Effective July 1, 2003, the State of Kansas promulgated a statute establishing ***Environmental Use Controls***, K.S.A. 65-1,221, *et seq.*, to address environmental contamination in a cost effective manner that is protective of human health and environment. This application package (application form and instructions) provides the mechanism for land owners and other eligible parties to apply for Environmental Use Controls.

APPLICATION AND INFORMATION SUBMITTED

The completed application is a request by the applicant to voluntarily restrict the use of a property in order to protect the public health and environment from known contamination which exceeds department standards for unrestricted residential use. The application and information on file at KDHE will be used by KDHE to determine if a property is eligible for Environmental Use Controls.

WHERE TO SEND APPLICATION

Send completed application and supporting information to:

Environmental Use Control Program
Remedial Section
Kansas Department of Health and Environment
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367

KDHE REVIEW AND RESPONSE TO AN APPLICATION

KDHE has **60 days** from receipt of a complete application to determine if a property is eligible for the establishment of Environmental Use Controls. Incomplete applications may be returned to the applicant with specific identification of incomplete items. The applicant has 30 days to submit a revised and/or completed application to KDHE. If the application is complete upon resubmittal, KDHE will finish its review and provide the eligibility determination to the applicant. **It is very important to ensure an application is completed in accordance with the instructions the first time!**

QUESTIONS ON ELIGIBILITY AND/OR COMPLETING THE APPLICATION

Call Christine Jump, Environmental Use Control Coordinator at (785)296-1935, or Rick Bean, Section Chief, Remedial Section at (785)296-1675.



SECTION 19

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

APPLICATION INSTRUCTIONS

SECTION I. PROPERTY INFORMATION

Name of Site	Provide the name of the site. The site name is the name that has been used to identify the site in previous correspondence, agreements, orders, etc.
Property Location	Provide a street address of the property. Also include the legal description of the property and/or a tax lot number, if one exists, which identifies the property. Tax lot numbers may be obtained from the city or county tax appraiser's office.
Legal Survey	A legal survey or accurate legal description of the property or portion of the property subject to the application must be included in the application package. If the exact portion of the property to be restricted cannot be determined at the time of application a more general site map indicating the approximate location of the applicable portion of the property should be included in the application package, with the understanding that a legal survey identifying the exact portion of the property will be required prior to implementing the Environmental Use Control.
Current Use	Describe the current activities at the property. For example: "no current activities" or "parking lot".
Future Use	If known, describe the intended future use of the property.
Surrounding Land Use	Check all boxes describing the land use in the area surrounding and immediately adjacent to the property. If the adjacent properties have several different land uses a map may be necessary to document the surrounding land usage.
Current Zoning	Provide the current zoning of the property.
Zoning Responsibility	Identify the local government entity responsible for zoning the property.

SECTION II. APPLICANT INFORMATION

Applicant	The individual, trust, firm, joint stock company, public or private cooperation, limited liability company or partnership, government, or other organization that is applying for an Environmental Use Control.
Applicant Contact	Provide the name of the person making application for an Environmental Use Control. The applicant contact can be the owner of the property or the owner's legal representative. The applicant contact can also be a representative with legal authority for a trust, firm, joint stock company, public or private cooperation, limited liability company or partnership, government, or other organization that is applying for an Environmental Use Control.
Contact Information	Provide the applicant contact's mailing address and direct telephone number; include a fax number and email address if available.
Applicant's Interest	If the applicant is not the owner of the property, the applicant must provide notarized authorization from the property owner to apply for the Environmental Use Control. The authorization should include the owner's name and contact information, the applicant's name and contact information, a brief description of the proposed Environmental Use Control, and the owner's signature verifying their authorization of the proposed Environmental Use Control to be placed on their property.
Owner Information	As stated on the application form, if the applicant is not the owner of the property, identify the property owner and provide the requested information.



SECTION 19

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

APPLICATION INSTRUCTIONS

SECTION III. NATURE OF POTENTIAL CONTAMINATION

Identified Contaminants	Check the appropriate boxes for all categories of contaminants that have been identified at the property. Check the "Other" box and list any other contaminants identified on the property for which descriptors are not provided.
Media Contaminated	Indicate the contaminated environmental media at the property.
Reference Documents	Reference any relevant reports, decision documents, studies, plans, etc. in order to provide the department with a list of documents that fully describes the environmental status of the property.
KDHE Cleanup Program	Check the appropriate box to indicate the KDHE program through which the contamination on the property is being addressed.
Description of Remedy	Provide a brief description of the proposed remedy for the contamination at the property. The description should include any planned, ongoing, or completed remediation at the property and how the Environmental Use Control will be used as part of the remedy.
Contaminant Levels	Check the appropriate box to indicate if contaminant levels on the property have been or will be left at levels above residential limits for unrestricted use at the completion of the proposed remedy. An Environmental Use Control may not be necessary if the property will be remediated to levels that allow unrestricted residential use.

SECTION IV. REQUESTED RESTRICTIONS/REQUIREMENTS/FREQUENCY

Requested Restrictions	Check the appropriate boxes for all restrictions that the applicant is volunteering to place on the property. Check the "Other" box and list any other requested restrictions for which descriptors are not provided. The restrictions applied to the property will be specified in a property specific Environmental Use Control Agreement after the application has been approved by the department.
Post-Remediation Requirements	Check the appropriate boxes for all the requirements necessary to maintain the requested restrictions. Check the "Other" box and list any other applicable requirements for which descriptors are not provided.
Monitoring/Inspection Frequency	Check the appropriate box for the anticipated monitoring or inspection frequency necessary for ensuring the requested restrictions are being maintained. Check the "Other" box and list any other anticipated monitoring or inspection frequencies if that frequency is not provided.
Inspection Access	Verify that KDHE will be allowed access to the property for the purpose of inspecting the property to ensure the requested restrictions are being maintained. The application will be approved only if KDHE is allowed access to the property.
Funding	In accordance with H.B. 2247, the applicant shall provide funding to the department for inspecting, administering, and tracking the Environmental Use Control for the property. The amount of funding required is based upon the property size, contaminant mobility/toxicity, maintenance requirements, and inspection frequency and will be determined by the department after review and approval of the application. After approval of the application, KDHE will either request a one-time payment that will not exceed \$10,000 or a long-term care agreement will be negotiated to provide the necessary funding. No money is required with the initial submittal of the application. Please check the appropriate box to indicate the preferred payment schedule.

SECTION V. APPLICATION TO PARTICIPATE TERMS/APPLICATION SIGNATURE

Participation Terms	Environmental Use Controls can only be applied to a property after adequate characterization and remediation, and only when it has been demonstrated to KDHE's satisfaction that the application of an Environmental Use Control will provide for protection of public health and the environment. There are certain considerations that may preclude KDHE's approval of an Environmental Use Control including, but not limited to, inadequate characterization, identified sensitive receptors, extremely toxic and/or mobile contaminants, or excessively elevated concentrations of contaminants, etc.
Application Signature	The Applicant Contact as defined in Section II must sign the application.



SECTION 19

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM



KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT BUREAU OF ENVIRONMENTAL REMEDIATION



Application for an ENVIRONMENTAL USE CONTROL for property located in the State of Kansas

Application Form Instructions: Please type or print legibly. Incomplete applications may be returned to the applicant. If any of the information requested is not applicable, please enter "NA" in the blank.

EUC Application Form Page 1 of 4

SECTION I. PROPERTY INFORMATION

Name of Site: _____

Property Address: _____

City (or Township): _____ County: _____ Zip Code: _____

Township _____ South Range _____ (E/W) Section _____ Quarter(s) _____

Tax Lot # _____ Property Size (in acres) _____

Has a legal survey been conducted on the portion of property subject to this application?

☐ Yes ☐ No

Please include a copy of the legal survey and a map that clearly depicts the property boundaries.

Current use of property: _____

Future use of property (if known): _____

Land use surrounding property (check most applicable description or combination of descriptions):

☐ Residential ☐ Industrial ☐ Commercial ☐ Agricultural ☐ Other (explain) _____

Current zoning of property: _____

Local governmental entity responsible for zoning this property: _____

SECTION II. APPLICANT INFORMATION

Applicant: _____

Applicant Contact: _____ Title: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: (____) _____ Fax: (____) _____ Email: _____

Applicant's interest in or relation to property (check all that apply):

☐ Owner of property

☐ Entity with written authorization from the owner

***Please attach a notarized letter of authorization for EUC application from the owner.**

If Applicant is not the owner of the property, provide the following information:

Owner's Name: _____ Organization: _____

Owner's Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: (____) _____ Fax: (____) _____



SECTION 19

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

Kansas Department of Health and Environment/Bureau of Environmental Remediation APPLICATION FOR AN ENVIRONMENTAL USE CONTROL

EUC Application Form Page 2 of 4

SECTION III. DESCRIPTION OF CONTAMINATION

Contaminant Type identified at the property (check all that you are aware of):

- | | | |
|--|--|---------------------------------|
| <input type="checkbox"/> Solvents/degreasers | <input type="checkbox"/> Pesticides (herbicides, insecticides, etc.) | <input type="checkbox"/> Metals |
| <input type="checkbox"/> Petroleum products | <input type="checkbox"/> Inorganics (salt, soda ash, etc.) | <input type="checkbox"/> PCBs |
| <input type="checkbox"/> Acids/bases | <input type="checkbox"/> Fertilizer (nitrate, ammonia) | <input type="checkbox"/> Sludge |
| <input type="checkbox"/> Paint/paint wastes | <input type="checkbox"/> Other (list) _____ | |

Contaminated media on property:

- ☐ Surface Soil ☐ Subsurface Soil ☐ Ground Water ☐ Surface Water ☐ Sediments

Please reference any relevant documents that will provide the department with a detailed description of the contamination and the proposed remedy. Attach a listing of additional references if necessary.

Title/Date: _____

Title/Date: _____

Title/Date: _____

Identify the KDHE Cleanup Program currently addressing the property:

- ☐ State Cooperative ☐ Voluntary Cleanup ☐ Brownfields ☐ State Water Plan
☐ Dry Cleaner Trust Fund ☐ Above/Underground Storage Tank ☐ RCRA
☐ Other: _____

Please describe the proposed remedy for the property: _____

Will contamination be left on the subject property at concentrations above levels allowing unrestricted residential use following a KDHE approved remediation? ☐ Yes ☐ No

INTERNAL USE ONLY

Project Code: _____

VCP Agreement Number: _____

KDHE Project Manager: _____

Consent Order Number: _____

Bureau/Section: _____



SECTION 19

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

Kansas Department of Health and Environment/Bureau of Environmental Remediation

APPLICATION FOR AN ENVIRONMENTAL USE CONTROL

EUC Application Form Page 3 of 4

SECTION IV. REQUESTED RESTRICTIONS/REQUIREMENTS/FREQUENCY

REQUESTED RESTRICTIONS:

Please check all that apply:

- ☐ Restrict excavation, dredging, construction or digging activities.
- ☐ Restrict drilling or using water wells for domestic or other purposes.
- ☐ Restrict or limit access to property.
- ☐ Restrict land use.
- ☐ Restrict the type of plant growth or vegetative cover.
- ☐ Other Restrictions - Please specify: _____

Please note the restrictions applied for in this application will be specified in a property-specific Environmental Use Control Agreement approved by the department and filed with the Register of Deeds in the county where the subject property is located.

POST-REMEDIAL REQUIREMENTS:

Please check all that apply:

- ☐ Posting notices, maintaining postings.
- ☐ Ground water monitoring.
- ☐ Protective structure maintenance (patching, erosional control, regrading, etc.).
- ☐ Vegetative maintenance (mowing, watering, planting, etc.).
- ☐ Fence maintenance.
- ☐ Other Requirements - Please specify: _____

PROPOSED MONITORING/INSPECTION FREQUENCY:

Please check one:

- ☐ One inspection every five years.
- ☐ Two inspections per year.
- ☐ Other - Please specify: _____
- ☐ One inspection per year.
- ☐ Four inspections per year.

Upon approval of an Environmental Use Control Agreement, does the applicant agree to allow access to KDHE personnel or contractors for the purpose of inspecting the property to ensure the requested restrictions are being maintained?

☐ Yes ☐ No*

*Please note this application will not be approved if the response to this question is "NO."

Please indicate the preferred payment schedule for the proposed Environmental Use Control?

- ☐ One-time payment
- ☐ Long Term Care Agreement (The agreement will specify the amount and frequency of payment).



SECTION 19

SECTION V. APPLICATION TO PARTICIPATE TERMS/APPLICATION SIGNATURE

The undersigned has voluntarily applied to the Kansas Department of Health and Environment (KDHE)/Bureau of Environmental Remediation (BER) to restrict the use of, or activities on the property defined in this application due to residual contamination remaining on the subject property above regulatory limits for unrestricted "residential" use. The undersigned agrees that based on this application the KDHE shall issue an Environmental Use Control Agreement to restrict specific use of, or activities on the subject property. The Environmental Use Control Agreement will contain property-specific restrictions identified in this application as approved by the department, inspection frequencies, access provisions, maintenance requirements, funding requirements and any other requirements associated with this application. The applicant agrees to register an approved, notarized Environmental Use Control Agreement with the Register of Deeds in the county where the property is located.

BER shall determine, and notify the undersigned accordingly, if the subject property is eligible for an Environmental Use Control. If the subject property is determined eligible, the undersigned shall sign an Environmental Use Control Agreement describing the voluntary restrictions requested by the applicant, register the Environmental Use Control Agreement with the Register of Deeds, and submit a notarized copy to the KDHE within 90 days of KDHE approval of this application.

Execution of this application form does not constitute an Environmental Use Control, and the undersigned shall not be bound to proceed with the voluntary restrictions. By completing and signing this application, the undersigned does not admit or assume liability for contamination at the property. The undersigned may terminate this application at any time by notifying BER.

The application should be submitted to : Environmental Use Control Program
Remedial Section
Kansas Department of Health and Environment
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367

Name: _____ (print or type) Title: _____

Signature: _____ Date: _____



SECTION 19

Environmental Use Controls
K.S.A. (2004 Supp.) 65-1,221 through 65-1,235

ENVIRONMENTAL USE CONTROLS

65-1,221. Intent. The intent of this act is to provide a voluntary mechanism to assist existing state programs to address environmental contamination in a cost effective manner that is protective of human health and the environment.

History: L. 2003, ch. 130, 1; July 1.

65-1,222. Definitions. As used in this act:

(a) "Department" means the Kansas department of health and environment.

(b) "Environmental use control" means an institutional or administrative control, a restriction, prohibition or control of one or more uses of, or activities on, a specific property, as requested by the property owner at the time of issuance, to ensure future protection of public health and the environment when environmental contamination which exceeds department standards for unrestricted use remains on the property following the appropriate assessment and/or remedial activities as directed by the department pursuant to the secretary's authority. For the purposes of this act, "environmental contamination" does not mean animal or process waste from a confined feeding facility as defined in K.S.A. 65-171d, and amendments thereto, livestock operations or the application of livestock waste for use as a plant nutrient. Any environmental use control created pursuant to this act runs with the property and is binding on the owner and subsequent owners, lessees and other users of the land.

(c) "Owner" means any owner of record of property, and any person or entity with written authorization from the owner to make decisions regarding the transfer of the subject property or placement of encumbrances on the subject property, other than by the exercise of eminent domain.

(d) "Person" means any individual, trust, firm, joint stock company, public or private corporation, limited liability company or partnership; the federal government or any agency or instrumentality thereof; any state, or any agency, instrumentality or political or taxing subdivision thereof; or any interstate body.

(e) "Protective structure" means an engineered physical structure implemented as part of the remedial action to control or respond to a release or threat of release of environmental contamination. Protective structure includes capping, fencing, berming, diking, drainage structures and other structures that may control migration or other releases of environmental contamination.

(f) "Property" means real property.

(g) "Remedial activity" means any site cleanup, soil or groundwater monitoring associated with a contaminated property, remedial action, corrective action, emergency

action, removal action or other action necessary or appropriate to respond to a release or threat of release of environmental contamination.

(h) "Secretary" means the secretary of health and environment.

History: L. 2003, ch. 130, 2; July 1.

65-1,223. Exclusions from act. (a) The provisions of this act, except the provisions of subsection (b) of K.S.A. 2004 Supp. 65-2,230, and amendments thereto, shall not apply to solid waste disposal areas which are issued permits pursuant to K.S.A. 65-3407, and amendments thereto, or which receive authorization from the secretary for unpermitted disposal pursuant to K.S.A. 65-3407c, and amendments thereto, provided that the owner of each such solid waste disposal area establishes environmental use controls for the area, subject to approval by the department, by executing and filing a restrictive covenant on the property deed.

(b) The provisions of this act shall not apply to confined feeding facilities as defined in K.S.A. 65-171d, and amendments thereto.

History: L. 2003, ch. 130, 3; July 1.

65-1,224. Environmental use control; application; requirements; approval or disapproval. (a) An owner of property, with departmental approval, may restrict the use of the owner's property to mitigate the risk posed to human health and the environment by imposing on the property an appropriate environmental use control.

(b) (1) If the owner elects to voluntarily restrict use of or activities on the owner's property, the owner or the owner's authorized representative shall make application to the department for approval of an environmental use control. Such application shall be made on forms provided by the department and shall be completed and submitted to the department by the owner or the owner's authorized representative.

(2) Department approval of an application shall be subject to the application's containing the following components: Appropriate restrictions to protect public health and the environment from known contamination which exceeds department standards for unrestricted residential use; access to the subject property; an inspection schedule that is appropriate to monitor conditions at the subject property; and the availability of funds to administer the provisions of this act related to the subject property.

(3) The department may require the applicant to provide financial assurance for category 3 property as described in subsection (c)(3) of K.S.A. 2004 Supp. 65-1,226, and amendments thereto, based on the potential for long term maintenance cost of protective structures and the potential for release or migration of environmental contamination from the property. The applicant shall provide the financial assurance by one or more methods satisfactory to the department, including, but not limited to, environmental



SECTION 19

insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer or other demonstration of financial capability. The demonstration of financial capability must be adequate to provide remedies which are protective of human health and the environment should the proposed remedial activity fail.

(4) The application shall include an accurate legal description or survey of the portion of the property where an environmental use control is proposed.

(c) The department shall review the application. If the application is disapproved by the department, the applicant may modify the application in a manner necessary to obtain department approval and resubmit the application for the department's approval. If the application is approved by the department, the department shall provide the applicant a written approval.

(d) An environmental use control pursuant to this act may be approved by the department as part of the remedial activity for the property when residual contamination which exceeds department standards for unrestricted residential use on the subject property.

History: L. 2003, ch. 130, 4; July 1.

65-1,225. Same; recording with register of deeds; enforcement.

(a) After an environmental use control has been approved by the department, the owner must register the environmental use control with the register of deeds in the county where the property is located or, if property is owned by the United States or a division thereof, a notice of the environmental use control must be filed with the register of deeds in the county where the property is located. When registering the environmental use control or filing the notice, the following must be included:

(1) A notarized original environmental use control agreement between the applicant and the department; and

(2) An adequate legal description or legal survey of the property which identifies the portion of the property which is subject to the environmental use control.

(b) The applicant must provide to the department a notarized copy of the recorded environmental use control agreement with the register of deeds seal for the property.

(c) Recorded environmental use controls established pursuant to this act shall be enforceable as set forth in K.S.A. 2004 Supp. 65-1,229, and amendments thereto.

History: L. 2003, ch. 130, 5; July 1.

65-1,226. Same; funding requirements; categories of property.

(a) Funding needs may be satisfied by department appropriations for property where adequate funding is supplied by federal grants, designated fee funds or other funding sources.

(b) Any funding requirements for an application pursuant to this act, will be based on a one time payment for the property, made by the original applicant.

(c) Funding requirements for other properties will be determined individually and be based on the size of the

property to which the environmental use control applies, toxicity and mobility of the contaminants to which the environmental use control applies, frequency of site inspections and the anticipated inspection costs, as determined by the department.

(1) Category 1 property includes property with the following characteristics: The property is not greater than five acres in size, the residual contamination is characterized by low toxicity and mobility, there is minimal anticipated maintenance of protective structures and the anticipated inspection frequency is once every five years. Category 1 properties would have a one-time payment by the applicant not to exceed \$2,000 to fund the life of the environmental use control.

(2) Category 2 property includes property with the following characteristics: The property may cover areas larger than five acres in size, the residual contamination is characterized by moderate toxicity and mobility, there is limited anticipated maintenance of protective structures and more complicated and/or costly inspections are anticipated, with an inspection frequency of not more than once per year. Category 2 property would have a one-time payment by the applicant not to exceed \$10,000 to fund the life of the environmental use control.

(3) Category 3 property includes property with some or all of the following characteristics: The property may cover a large acreage, the residual contamination is characterized by higher toxicity or mobility, complicated maintenance or monitoring of protective structures is required and frequent or complicated site inspections are anticipated, which may be more frequent than once per year. The inspection cost of category 3 properties is also dependent on the future uses of the property and the maintenance of protective structures by the property owner. For this reason, long term care agreements between the department and the applicant will be required for category 3 properties. These long term care agreements will include a provision to reimburse the department for costs incurred to perform the long term care at the property.

(d) The secretary shall remit to the state treasurer, in accordance with K.S.A. 75-4215, and amendments thereto, all moneys received from fees and long term care reimbursement agreements pursuant to this section. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the environmental use control fund.

History: L. 2003, ch. 130, 6; July 1.

65-1,227. Same; term; removal or expiration; modification; liability.

(a) An environmental use control may be granted either in perpetuity or for a term of years, as determined by the department. An environmental use control may not be approved for a term of years unless provisions are included that ensures the protection of human health and the environment beyond the expiration of the environmental use control. Upon expiration of the term



if contamination remains above department standards, as set forth in the approved environmental use control, the department can require additional action.

(b) An environmental use control runs with the land and is binding on all successors in interest to property until the environmental use control is removed upon the department's approval or upon expiration of the term of the environmental use control.

(c) An environmental use control shall be removed if the property owner demonstrates to the department's satisfaction that the original risk to human health or the environment which created the need for the control is no longer present. An owner must submit a request to the department for approval to remove all or a portion of the environmental use controls from the property. The department shall review the request and provide the owner with the department's decision to approve or deny the request within 120 days after the department's receipt of the request. If the department denies the request, justification shall be provided to the owner with a written explanation of the denial, which may include that the applicant has not provided the documentation to demonstrate that the request is protective of human health and the environment, as determined by the department.

(d) If the department approves an owner's request to remove all or a portion of environmental use controls, the owner shall file the approval with the register of deeds in the county where the property is located.

(e) An environmental use control may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement or other common law principles relating to covenants or by the exercise of eminent domain.

(f) An environmental use control may be modified by mutual written agreement by the property owner and the department.

(g) The department shall not acquire any liability by virtue of approving an environmental use control or by approving removal of all or a portion of environmental use controls.

History: L. 2003, ch. 130, 7; July 1.

65-1,228. Same; restrictions or prohibitions. (a) An environmental use control pursuant to this act may restrict or prohibit the activities at or uses of property. The restrictions imposed shall be those agreed to by the applicant and deemed necessary by the department to protect the public from exposures to contaminants which remain at the property.

(b) An environmental use control pursuant to this act may include or require the following:

(1) Prompt notification to the department of any transfer of the property, such notice to be given by the transferor;

(2) prompt notification to the department of any change in use of the property, such notice to be given by the property owner;

(3) maintenance of protective structures or remedial

systems at the property, such as soil caps, soil covers, soil surfaces, berms, drainage structures, vegetation, monitoring wells or other structures or systems;

(4) access to the property by agents of the department as necessary to inspect and monitor remediation activities, monitoring wells, surface streams and protective structures or remedial systems and to ensure implementation and enforcement of the requirements, restrictions and other limitations of the environmental use controls;

(5) any other obligations necessary to reduce or eliminate risks or threats to human health and the environment from the property; or

(6) a one-time payment or long term care agreement to provide funding for environmental use control oversight.

(c) Restrictions, prohibitions and zoning requirements placed on property by a local or state government may be substituted in place of an environmental use control. Such restrictions, prohibitions and zoning requirements may be utilized in addition with any environmental use controls approved by the department. This provision does not grant or expand authority of local government to restrict, prohibit, zone or regulate land.

(d) All interests not limited by the environmental use control shall remain with the owner.

History: L. 2003, ch. 130, 8; July 1.

65-1,229. Same; enforcement. (a) Upon receipt of information that approved environmental use controls are not being implemented in accordance with an approved environmental use control agreement or that property subject to an approved environmental control presents a hazard to human health or the environment, the secretary may take such actions as may be necessary to protect human health or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner of the subject property to take such steps as are necessary to correct any deficiencies and fully implement the approved environmental use controls.

(2) Issuing an order retracting the approval of the remedial action for the subject property, which included the environmental use control as part of the remedy and require the owner of the property to implement remediation of the property to a cleanup standard which will allow for unrestricted use of the property.

(3) For category 3 property as described in subsection (c)(3) of K.S.A. 2004 Supp. 65-1,226, and amendments thereto, commencing an action enjoining acts or practices set forth in the approved environmental use controls or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin such actions which result in approved environmental use controls not being implemented or not being fully or properly implemented or which present substantial and imminent threat or hazard to human health or the environment.

(b) Any order of the secretary pursuant to subsection



SECTION 19

(a)(1) or (a)(2) is subject to hearing and review in accordance with K.S.A. 2004 Supp. 65-1,234, and amendments thereto.

(c) An environmental use control may not be separated from the property and survives foreclosure of a mortgage, lien or other encumbrance, as well as tax sales and the issuance of a tax deed.

History: L. 2003, ch. 130, 9; July 1.

65-1,230. Same; department oversight and tracking. (a) The department shall provide oversight of the environmental use control for property to ensure that the property is being used only for the purposes permitted by the terms of the environmental use control agreement and is not being used in a manner that is prohibited or restricted by the terms of the agreement.

(b) The department shall develop and maintain an environmental use control tracking system on all approved environmental use controls. The tracking system data shall be made available to the public in a manner which allows review by either city or county and shall include the following:

- (1) Name of the property;
- (2) address of the property, including the city and county;
- (3) legal description of the property;
- (4) cause and type of the environmental contamination;
- (5) description of the environmental use control; and
- (6) duration of the environmental use control.

History: L. 2003, ch. 130, 10; July 1.

65-1,231 Environmental use control fund. (a) There is established in the state treasury the environmental use control fund. Moneys from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Moneys collected from the environmental use control one-time payments and long term care agreement reimbursements;

(2) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund; and

(3) interest attributable to the investment of moneys in the fund.

(b) Moneys in the environmental use control fund shall be expended only for costs of:

- (1) Review of environmental use control applications;
- (2) oversight of remedial projects which include an environmental use control as an element of their remedy, including inspections, monitoring and tracking of the environmental use control;
- (3) activities performed by the department to address immediate or emergency threats to human health or the

environment related to properties subject to environmental use controls;

(4) development, operation and maintenance of the environmental use control tracking system; and

(5) administration and enforcement of the provisions of this act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the environmental use control fund interest earnings based on:

(1) The average daily balance of moneys in the environmental use control fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the environmental use control fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee for purposes set forth in this section.

History: L. 2003, ch. 130, 11; July 1.

65-1,232. Rules and regulations. The secretary shall adopt rules and regulations to implement the provisions of this act.

History: L. 2003, ch. 130, 12; July 1.

65-1,233. Publication of approved use controls. The department shall publish annually in the Kansas register a summary of the number of approved environmental use control agreements pursuant to this act.

History: L. 2003, ch. 130, 13; July 1.

65-1,234. Review of agency actions. A person adversely affected by any order or decision of the secretary pursuant to this act, within 15 days after service of the order or decision, may request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 2003, ch. 130, 14; July 1.

65-1,235. Severability. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

History: L. 2003, ch. 130, 15; July 1.

SECTION 20

KANSAS

AGRICULTURAL

REMEDIATION

BOARD

AND

REIMBURSEMENT

PROGRAM





SECTION 20

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

KANSAS AGRICULTURAL REMEDIATION BOARD REIMBURSEMENT PROGRAM

Background

The Kansas Agricultural Remediation Act was passed by the Kansas Legislature in 2000 and became law on July 1, 2000. This act created the Kansas Agricultural Remediation Program for the purpose of reimbursing responsible, eligible parties for corrective action costs incurred after July 1, 1997. Corrective action costs must be submitted to the Kansas Agricultural Remediation Board (KARB) within two years after incurring the costs for consideration. Eligible participants must have complied with corrective action requests or orders issued by the Kansas Department of Health and Environment (KDHE) or had such corrective actions approved by KDHE. The KARB is responsible for determining the direct reimbursement amount to eligible participants. The board consists of seven members who are appointed by Governor.

The Remediation Reimbursement Fund has total annual revenue of approximately \$1,000,000 which is generated by assessing an annual fee on pesticide products, pesticide dealers, grain storage, fertilizer products, and custom blenders. The fund is administered and managed by the KARB.

The Board meets quarterly and reviews all completed applications that are received 14 days prior to the meeting date. A completed application may be eligible for reimbursement for up to 12 months after the receipt of the application by the Board administrator.



Incidental product spillage and poor materials handling practices that cause environmental contamination may have costly consequences for agribusiness facilities.



Some costs for investigation and cleanup activities conducted under KDHE oversight that address environmental impacts resulting from agribusiness may be reimbursable through the Kansas Agricultural Remediation Board (KARB).



Reimbursement Determination

The legislature set a maximum reimbursement amount at the following levels: If an eligible person is assessed a fee, then that person can receive 90% of the total costs greater than \$1,000 and less than \$90,000 plus 80% of the total eligible corrective action costs greater than \$100,000 and less than \$200,000. If a person does not pay an assessment or is a pesticide dealer who has paid a \$5 assessment, then the person is eligible to receive 100% of their costs which are greater than \$1,000 and less than or equal to \$10,000.

Kansas Administrative Regulations (K.A.R.) 125-1-1 through K.A.R. 125-1-9 govern the program.

The regulations define the application process, eligible sites and eligible and ineligible costs. Examples of eligible costs include consultant fees, sampling and analyzing soil and ground water, and removing contaminated soil or ground water. Examples of ineligible costs include attorney's fees, loss of income, and replacement costs of spilled agricultural chemicals.



A primary emphasis for cleanup of agricultural facilities is source removal.

How to Apply

An application form and a set of regulations can be obtained by contacting the Kansas Agricultural Remediation Board Administrator or by accessing the form on the internet at www.karb.org.

KARB Administrator
816 SW Tyler, Topeka, KS 66612
785-440-0356 (phone)
785-234-2930 (fax)



Where feasible, KDHE encourages beneficial reuse of fertilizer-contaminated soil through land application for agronomic benefit.



SECTION 20

KANSAS VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

KARB Program Statistics

Statistics for 2004

Total reimbursements - \$1,606,065.92

Average reimbursement - \$23,276.32

Statistics for 2003

Total reimbursements - \$1,373,492.78

Average reimbursement – \$18,560.71

Statistics for 2002

Total reimbursements - \$ 939,108.97

Average reimbursement – \$46,955.45



Restoration, such as grading and resurfacing following contaminated soil removal, can be reimbursed through KARB.



KDHE and KARB strive to assist the agricultural community in addressing environmental legacies while still supporting their vital economic role in the State.

SECTION 21

MEMORANDUM

OF

AGREEMENT/KDHE

AND

USEPA

REGION VII





MEMORANDUM OF AGREEMENT/KDHE AND USEPA REGION VIII

SUPERFUND MEMORANDUM OF AGREEMENT BETWEEN THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VII VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM AND STATE COOPERATIVE PROGRAM

I. PURPOSE

The Kansas Department of Health and Environment (KDHE) and Region VII of the United States Environmental Protection Agency (Region VII), enter into this Superfund Memorandum of Agreement (MOA) for the purposes of acknowledging the adequacy of the Kansas Voluntary Cleanup and Property Redevelopment Program (VCPRP) and the Kansas State Cooperative Program (SCP), defining the roles and responsibilities of Region VII and KDHE, and clarifying the division of responsibilities with respect to sites addressed under the authority of the VCPRP and SCP.

II. BACKGROUND

Region VII and KDHE agree that the revitalization of contaminated properties, or properties perceived to be contaminated, (often called "Brownfields") will provide a significant benefit to the environment and economies of the local communities of the state of Kansas. To the extent possible, Region VII and KDHE seek to simplify the revitalization of industrial and commercial properties by addressing the existing regulatory impediments to the cleanup, financing, transfer, and appropriate use of these properties.

Both agencies will work in a cooperative and coordinated effort to ensure that successful implementation of this effort is accomplished and pledge to employ their authorities and resources in a complimentary and non-duplicative manner.

III. SELECTION OF SITES

A. VCPRP sites included under this MOA must meet the eligibility requirements under K.S.A. §§ 65-34, 161 through 174 of the Kansas Voluntary Cleanup and Property Redevelopment Act. Region VII and KDHE agree to exclude from this MOA the following categories of VCPRP sites:

1. Sites that are listed on, or are proposed for listing, on the National Priorities List (NPL);



SECTION 21

2. Sites where a site investigation has been completed by Region VII or KDHE pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., (CERCLA) and it has been determined by Region VII that the site should be scored using the Hazard Ranking System Package for potential listing on the National Priorities List (NPL).
3. Sites with facilities that are RCRA-permitted facilities or facilities which have had, have, or should have interim status under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (RCRA); and
4. Sites which are subject to existing state or federal orders or agreements for cleanup, or sites that warrant enforcement action by Region VII or KDHE pursuant to RCRA or CERCLA or pursuant to Kansas laws.

B. SCP sites included under this MOA must meet the eligibility requirements of the Kansas State Cooperative Program as implemented by KDHE pursuant to K.S.A. §§ 65-3452 through 3455. Region VII and KDHE agree to exclude from this MOA the following categories of SCP sites:

1. All SCP sites not listed in Attachment A to this MOA;
2. Sites that are listed on, or are proposed for listing, on the NPL, and sites where Region VII has submitted a HRS ranking package to HQ; unless such sites are listed on Attachment A to this MOA;
3. Sites with facilities that are permitted facilities or facilities which have had, have, or should have interim status under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (RCRA); and
4. Sites which are subject to existing federal orders or agreements for cleanup, or sites that warrant enforcement action by Region VII or KDHE pursuant to RCRA or CERCLA or pursuant to Kansas laws.

Region VII and KDHE may annually, or at such other times as needed, update the Attachment A list by mutual, written agreement. Updates may add or delete SCP sites. Added sites may include, but are not limited to, VCPRP sites that after enrollment have become ineligible for the VCPRP in accordance with K.S.A. §§ 65-34, 161 through 174 or pursuant to Section III,A,2 of this MOA. Deleted Attachment A sites shall include any site that Region VII notifies KDHE has failed to meet any one or more of the conditions set forth below in Section V.B. of this MOA, or meets any one or more of the conditions set forth below in Section VIII.A. of this MOA.



SECTION 21

IV. PROGRAM GOALS

A. Region VII and KDHE seek to protect human health and the environment by encouraging the voluntary and/or cooperative investigation and cleanup of properties in Kansas by implementing the following strategic goals:

1. Promoting appropriate investigations and cleanups by groups or individuals participating in the VCPRP or the SCP;
2. Developing partnerships between Region VII, KDHE, other state and local government agencies, interest groups, citizen and community groups, and the private sector;
3. Providing available environmental and regulatory information to property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties, and elected officials to allow for informed decision-making;
4. Providing meaningful public involvement activities to ensure that the public is informed of and involved in planning for response actions related to the VCPRP and the SCP. For the VCPRP, these public involvement activities are described in K.S.A. § 65-34,168 (e), and regulations in K.A.R. 28-72-12; and for SCP sites under KDHE's agency policy #BER RS-002, Public Information Program;
5. Promoting cost-effective investigation and cleanup activities of contaminated media which protect human health and the environment and are consistent with projected future uses at the sites and applicable Federal and State law and local land use regulations; and
6. Promoting long-term reliability of cleanup measures for the sites.

B. To accomplish these goals, Region VII will support KDHE in further developing and expanding the use of the VCPRP and SCP. Region VII recognizes the VCPRP and SCP as instrumental in developing and implementing successful strategies to help promote voluntary investigation, cleanup and revitalization of properties. KDHE will continue to support efforts to promote and implement the Region VII Brownfields initiatives. KDHE and Region VII recognize each other as key partners in the ongoing success of the VCPRP and SCP.



SECTION 21

V. IMPLEMENTATION

A. KDHE and Region VII will work in a coordinated effort to avoid duplication of effort at sites, and to ensure that site cleanups progress in a timely fashion. KDHE will report to Region VII the status of the VCPRP and SCP as described in Section VII of this MOA.

B. KDHE intends under this MOA that investigations and cleanups of properties are performed under either the VCPRP or the SCP. The SCP is an enforcement based cleanup program for sites that do not meet the eligibility criteria of the VCPRP. KDHE and Region VII agree that for SCP sites the following conditions apply:

1. The KDHE has responsibility, with minimal Region VII involvement, to provide for a timely and CERCLA-protective cleanup and to support the public's right of participation in the decision-making process. Region VII will work with KDHE to determine the appropriate level of oversight that Region VII should exercise at each site covered by this MOA;
2. The quality of the response actions conducted for sites in the SCP will be substantially similar to a responses required under CERCLA. The KDHE should generally select a remedy which provides a level of protectiveness comparable to relevant and appropriate federal requirements for the site; and
3. Any cleanups conducted by private parties under the SCP shall be conducted under enforceable agreements between those parties and KDHE pursuant to K.S.A. §§ 65-3452 through 3455.

C. Region VII personnel have visited KDHE's office to review and evaluate the adequacy of KDHE's VCPRP and SCP programs based on EPA HQ's Six Baseline Criteria for Voluntary Cleanup Programs as described in the November 14, 1996 Memorandum, Interim Approach to Regional Relations with State Voluntary Cleanup Programs. Based on such review and further discussions between Region VII and KDHE, Region VII has determined that both the VCPRP and SCP are adequate. Specifically, the VCPRP and SCP:

1. Provide opportunities for meaningful community involvement;
2. Ensure that voluntary response actions are protective of human health and the environment;
3. Have adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available from KDHE;



SECTION 21

4. Provide mechanisms for the written approval of the response action plans and a certification or similar documentation indicating that the response actions are complete;
5. Provide adequate oversight to ensure that voluntary response actions are conducted in a manner to assure protection of human health and the environment, as described above; and
6. Show capability, through enforcement or other authorities, of ensuring completion of response actions if the party(ies) conducting the response action fail(s) or refuse(s) to complete the necessary response actions, including operation and maintenance or long-term monitoring activities.

D. Region VII and KDHE will provide technical assistance to local and state government agencies in order to facilitate the revitalization of contaminated or potentially contaminated properties in Kansas.

E. When a site has been cleaned up according to the practices and procedures of the VCPRP, KDHE may issue a written No Further Action determination pursuant to K.S.A. 65-34,169. When a site has been cleaned up according to the practices and procedures of the SCP, KDHE may reclassify the site as resolved on KDHE's Identified Sites List.

VI. PROTECTIVENESS

KDHE, through the VCPRP or the SCP shall ensure that voluntary response actions are protective of public health, welfare, and the environment. KDHE, through the VCPRP or SCP, shall determine whether mitigation of exposure of human and ecological receptors to contaminated media is warranted, consistent with applicable Federal and State law. Cleanup standards that are protective of human health and the environment will be determined by KDHE, for sites in the VCPRP or SCP, consistent with the current and projected future uses of the site.

Mitigation of exposure to contaminated media shall be conducted cost-effectively, consistent with the current and projected future uses at the site, and consistent with applicable Federal and State law. Long-term reliability shall also be a goal when selecting response actions.



SECTION 21

VII. REPORTING

On a quarterly basis, KDHE will report to Region VII the following:

1. Number and names of sites participating in the VCPRP and SCP and the status of those sites;
2. Number and names of sites entering the VCPRP and SCP;
3. Sites having received a KDHE written no further action determination or reclassified as resolved on KDHE's Identified Sites List; and
4. Notifications of VCPRP and SCP non-completions, defaults, or terminations from the VCPRP and SCP programs, including any voluntary or responsible party who has demonstrated a pattern of uncorrected noncompliance.
5. Any substantive changes in either the VCPRP or SCP law, regulations, or policies, including but not limited to changes in cleanup standards, eligibility criteria, or public involvement.

VIII. ROLES

A. Region VII does not anticipate taking federal removal or remedial action at sites being addressed under the VCPRP or SCP which are covered by this MOA unless:

1. Region VII determines that the site may present an imminent and substantial endangerment to public health, welfare, or the environment; or
2. An emergency situation arises requiring federal action; or
3. The VCPRP or SCP applicant fails or refuses to comply with the approved cleanup plan in a timely manner, unless KDHE takes the lead and resolves the issue in a timely manner to ensure protectiveness at the site; or
4. After cleanup has been implemented or completed, the site or facility fails to maintain engineering controls, land use designation and institutional controls as identified in KDHE's Voluntary Cleanup Plan, or no further action determination in the VCPRP, or in the KDHE State Cooperative Program Corrective Action Decision document, unless KDHE takes the lead and resolves the issue in a timely manner to ensure protectiveness at the site.

B. When a site has been cleaned up according to the practices and procedures of the VCP and/or SCP and KDHE has issued a No Further Action Letter under the VCPRP or



SECTION 21

reclassified the site as resolved under the SCP, Region VII does not anticipate taking federal removal or remedial action at the site except as stated in Section VIII. A.

C. Notwithstanding any other provision of this MOA, nothing herein affects or limits Region VII's or KDHE's authority or ability to undertake any enforcement action authorized by law. Region VII and KDHE retain any and all rights or authorities that they respectively have, including, but not limited to legal, equitable, or administrative rights. This specifically includes Region VII's and KDHE's authority to conduct, direct, oversee, and/or require environmental response actions in connection with any facility or site which participates in the VCPRP or SCP.

D. If, following the issuance of the No Further Action determination by KDHE, or reclassification to resolve a site from KDHE's Identified Sites List, conditions at a site including those previously unknown to KDHE or Region VII indicate that the response action undertaken pursuant to the VCPRP or SCP does not protect human health and the environment, Region VII and KDHE retain the right to take the response action necessary to protect public health, welfare, and the environment.

E. This MOA does not expand or limit the rights of any party.

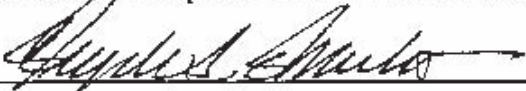
IX. TERM

Region VII enters into this agreement based upon a review of Kansas' currently existing policies, guides, laws and regulations. Region VII or KDHE upon notice and consultation with the other party may amend this MOA or may terminate its participation in this MOA in the event that either party determines this to be appropriate based upon changes to the Kansas program or its implementation.

This MOA is effective upon signature by the parties below, and will remain effective until KDHE or Region VII terminates the MOA by providing written notice of such termination to the other party. Termination shall be effective 30 days after receipt of such notice by the other party. The MOA may be modified by mutual consent of the parties.

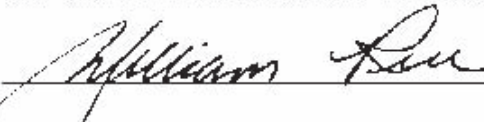
WHEREFORE, Region VII and KDHE agree and consent to this MOA:

For the Kansas Department of Health and the Environment:



Date: 2-13-01

For the Environmental Protection Agency, Region VII:



Date: 3/2/01

